

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/1. IN GENERAL/(1) NATURE AND AUTHORITY/(i) Composition of Parliament; Legislative and Financial Power/801. Composition of Parliament.

## **PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)**

### **1. IN GENERAL**

#### **(1) NATURE AND AUTHORITY**

##### **(i) Composition of Parliament; Legislative and Financial Power**

###### **801. Composition of Parliament.**

The Parliament of the United Kingdom of Great Britain and Northern Ireland<sup>1</sup> consists of the monarch; the House of Lords<sup>2</sup>, the lords spiritual and temporal; and the House of Commons<sup>3</sup>, the elected representatives of the people.

The word 'Parliament' may be used to refer to joint assemblies of the members of the two Houses<sup>4</sup>. It may also refer to sittings of either or both of the Houses of Parliament without the participation of the Queen, as in the conventions of individual and collective ministerial responsibility to Parliament<sup>5</sup> or parliamentary scrutiny of government policy in which the Queen has no role.

1 See the Royal and Parliamentary Titles Act 1927 s 2(1); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 201 et seq. Unless otherwise specified, 'United Kingdom' means Great Britain and Northern Ireland: s 2(2). Cf the Interpretation Act 1978 s 5, Sch 1 ('United Kingdom' means Great Britain and Northern Ireland). 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

2 See PARA 828 et seq.

3 See PARA 892 et seq.

4 As where the Queen meets Parliament in person at the opening of Parliament in the Chamber of the House of Lords: see PARA 1010; and Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 287-288.

5 As to individual and collective ministerial responsibility see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 416-417.

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###### **802. Powers of the Crown.**

The two Houses of Parliament are summoned, prorogued and dissolved by the monarch by the exercise of the royal prerogative<sup>1</sup>. Royal assent<sup>2</sup> must be given to any bill passed by the House of Lords and the House of Commons<sup>3</sup> before it can have the force of law<sup>4</sup>. Where a bill affects

the interests of the monarch, her consent must be signified at some stage in each House before the bill is passed<sup>5</sup>.

The Crown or its ministers are restrained from ruling without a Parliament, since it is enacted that for redress of all grievances<sup>6</sup> and for the amending, strengthening and preserving of laws Parliaments ought to be held frequently<sup>7</sup>.

- 1 As to the exercise of the royal prerogative see generally Blackburn, *The Meeting of Parliament* (1990).
- 2 As to the manner in which the royal assent is given see **PARLIAMENT** vol 34 (Reissue) PARAS 833-835.
- 3 As to the circumstances in which a bill passed by the Commons alone may become law on royal assent see PARA 827; and **PARLIAMENT** vol 34 (Reissue) PARA 821.
- 4 Bills are not statutes and have no legal effect until they have received the royal assent: *R v Middlesex Justices* (1831) 2 B & Ad 818. Proceedings for enforcement of statutory obligations will not be stayed on the ground that the repeal of the obligations is proposed by a bill which has not yet received the royal assent: *Willow Wren Canal Carrying Co Ltd v British Transport Commission* [1956] 1 All ER 567, [1956] 1 WLR 213. As to the stay of proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 529 et seq. For the words of enactment of Acts of Parliament see **STATUTES** vol 44(1) (Reissue) PARA 1273. As to the nature of the royal prerogative generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 367 et seq.
- 5 For the circumstances in which the monarch's interests may be affected and the manner in which her consent is signified see **PARLIAMENT** vol 34 (Reissue) PARA 819.
- 6 As to the redress of grievances see PARA 806.
- 7 Bill of Rights s 1 art XIII. As to the history and citation of the Bill of Rights see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 35.

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### 803. Legislative authority of Parliament.

Parliament is the supreme legislative authority in the United Kingdom<sup>1</sup> and throughout the whole of Her Majesty's dominions<sup>2</sup> except where it has surrendered its supreme legislative authority<sup>3</sup>. The courts recognise no limits to its power of making and unmaking laws, except where legislation is incompatible with European Community Law<sup>4</sup>.

On certain occasions, by statute, Parliament has referred issues to popular referenda, but these have been of an advisory character only and have not limited Parliament's ultimate discretion<sup>5</sup>.

- 1 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 232-300. As to the meaning of 'United Kingdom' see PARA 801 note 1. As to devolution see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the legislative work of Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 728 et seq.
- 2 As to the meaning of 'Her Majesty's dominions' see **COMMONWEALTH** vol 13 (2009) PARA 707.
- 3 See **COMMONWEALTH** vol 13 (2009) PARAS 705, 707.
- 4 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 23-24. An existing Parliament cannot bind a succeeding Parliament: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 234. Further practical limitations on the freedom of Parliament to legislate may arise from treaty obligations: see generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 5 See, historically, the Referendum Act 1975, the Scotland Act 1978 and the Wales Act 1978 (now all wholly repealed), and the Referendums (Scotland and Wales) Act 1997, providing for the pre-legislative referendum

held in Scotland on 11 September 1997 on the establishment and tax-varying powers of the Scottish Parliament (s 1(1)) and for the referendum held in Wales on 18 September 1997 on the establishment of a Welsh Assembly (s 2(1)); and see generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 232, 956. See also **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 4.

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#### **804. Financial authority of Parliament.**

The Crown, acting on the advice of ministers, makes known to the House of Commons the monetary requirements of government<sup>1</sup>. The Commons grant such aids or supplies as are necessary for these requirements and provide through taxes the ways and means<sup>2</sup> to meet the supplies which have been granted. The Commons do not grant money unless it is demanded by the Crown, nor do they impose or increase a tax except at the request of the Crown conveyed to them by a responsible minister. In accordance with this principle, no clause or amendment which has the effect of imposing a new charge upon the public revenue or the people may be considered during the passage of a bill in the Commons unless it is founded upon a resolution of the House to which Her Majesty's recommendation has been signified by a minister<sup>3</sup>. The share of the House of Lords in financial control is limited to agreeing to the bills which are required to give expression to the Commons response to the demands of the Crown<sup>4</sup>; and the Lords may only effectively withhold their agreement for one month to a bill which is certified as a money bill under the Parliament Act 1911<sup>5</sup>.

1 See PARA 1040 et seq.

2 See PARA 1049 et seq.

3 See PARAS 1024-1027; **PARLIAMENT** vol 34 (Reissue) PARA 783; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 230, 712 et seq.

4 See PARA 821 et seq.

5 See the Parliament Act 1911 s 1; and PARA 827.

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#### **(ii) Control over the Executive and over Subordinate Legislation**

##### **805. Parliamentary control over the action of the Crown and the executive.**

Parliament is not an executive authority, but either directly or indirectly it exercises control over the action of the Crown<sup>1</sup> and of the executive government and over the administration of the laws which it has enacted. This control is effected in the following ways:

- 1 (1) by the legal restrictions which prevent the Crown or its ministers from imposing any charge upon the people or from maintaining a standing army in time of peace without Parliament's consent;

- 2 (2) by the doctrine of the constitution by which supply is granted annually by the House of Commons and must receive legislative sanction each year;
- 3 (3) by means of the rule by which supply granted to the Crown must be appropriated to the particular purposes for which it has been granted; and
- 4 (4) by the doctrine of the constitution by which a Minister of the Crown is held responsible to Parliament for any act done by him in his ministerial capacity, or by the ministry or department of which he is the political head, or for any advice tendered by the minister to the monarch<sup>2</sup>.

1 See generally R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 1-003; and Jennings, *Parliament* (2nd Edn, 1957). As to the power of the Crown and the extent to which the consent of the legislature may be required in relation to the declaration of peace or war and the making of treaties see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 802, 809 et seq; **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 26.

2 As to parliamentary government generally see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) ch 1; Marshall, *Constitutional Conventions* (1984) Ch IV; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 16, 373, 414 et seq.

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## **806. Parliamentary scrutiny of government acts and policy.**

An important role of the House of Commons, and to a lesser extent of the House of Lords, is the scrutiny of the work of ministers and government and the imposition of individual<sup>1</sup> and collective<sup>2</sup> ministerial responsibility.

Backbench members of Parliament may ask questions<sup>3</sup> of ministers in order to elicit information and to air concerns. Redress of grievance for members of the public is sought through the asking of parliamentary questions<sup>4</sup>. Ministers are, in principle, expected to answer parliamentary questions, although there are a number of accepted grounds on which questions may not be admitted<sup>5</sup>, or answers may be refused<sup>6</sup>. Answers to questions are given either orally or in writing<sup>7</sup>. A member of Parliament who is not satisfied with the answer may seek to raise the matter in debate, in particular in the half-hour debate that takes place on the adjournment at the conclusion of each day's sitting<sup>8</sup>.

In relation to executive agencies in the Civil Service, questions from members of the House of Commons for written answers are usually expected to be addressed to the chief executive of the agency in question rather than to the minister, and it is only if satisfaction is not achieved for the complainant through this route that the minister will deal with the question<sup>9</sup>.

Apart from answers to parliamentary questions, ministerial statements made to the House<sup>10</sup> and debates in the chamber<sup>11</sup>, the principal fora in which the expenditure, administration and policy, and efficiency and effectiveness of ministers and their departments are subjected to scrutiny in the House of Commons are the departmental select committees<sup>12</sup>.

1 As to individual ministerial responsibility see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 416.

2 As to collective ministerial responsibility see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 417.

3 As to questions see PARA 969.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 344 et seq.

5 These include (1) matters which do not relate to the public affairs with which the minister is connected; (2) matters which deal with an action of a minister for which he is not responsible to Parliament; (3) matters which are sub judice; (4) hypothetical questions; and (5) questions which the minister has already refused to answer during the current session: see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 346-353.

6 The current version of the *Ministerial Code of Conduct* (July 2007) states that: 'ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest which should be decided in accordance with the relevant statutes and the Freedom of Information Act 2000', para 1.2(d). As to the Freedom of Information Act 2000 see **CONFIDENCE AND DATA PROTECTION**.

7 Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 340-342. As to parliamentary questions generally see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) chs 6, 9; the *Report of the Select Committee on Parliamentary Questions* (HC Paper (1971-72) no 39); the *Third Report from the Select Committee on Procedure: Parliamentary Questions* (HC Paper (1990-91) no 178); and the *Fifth Report of the Public Administration Select Committee: Ministerial Accountability and Parliamentary Questions* (HC Paper (2004-05) no 449); the *Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report* (HC Paper (2005-06) no 853); the *Third Report of the Select Committee on Procedure: Written Parliamentary Questions* (HC Paper (2008-09) no 859).

8 See PARA 966.

9 See *Government Reply to the Eighth Report from the Treasury and Civil Service Committee: Progress in the Next Steps Initiative* (HC Paper (1989-90) no 481), (Cm 1263); 198 HC Official Report (6th series), 15 November 1991, written answers col 677; 218 HC Official Report (6th series), 9 February 1993, written answers col 609, 612; and Giddings (ed) *Parliamentary Accountability* (1995) ch 7.

10 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 358 et seq.

11 See Erskine May's Parliamentary Practice (23rd Edn, 2004) ch 17.

12 See PARA 979 et seq.

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### **807. Effect of the presence of ministers in Parliament.**

As a further control<sup>1</sup>, the practice and procedure of both Houses of Parliament ensure that the action of the executive is always open to the criticism of Parliament. Ministers of the Crown should not indefinitely remain in office without being members of either the House of Lords or the House of Commons. In either House it is permissible for members to address questions to ministers with regard to the administration of their departments<sup>2</sup>, and in both Houses motions may be made reflecting on the conduct of a particular minister or of the government as a whole<sup>3</sup>.

1 For methods of parliamentary control see PARA 805. See also PARAS 808-809.

2 See PARAS 861, 967-970.

3 When it is proposed in the Commons to move a vote of censure upon the government from the front opposition bench, facilities for the debate upon it are afforded by the government. A minister may also be censured by moving to reduce his salary. For the circumstances in which a ministry as a whole may be compelled to resign or advise a dissolution of Parliament as a result of an adverse vote of the Commons see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 1-095 et seq; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 414-420. An example of this occurred on 28 March 1979: see 235 Commons Journals 250. For the effect of an adverse vote in

compelling an individual minister to resign see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 416.

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### **808. Parliamentary control over subordinate legislation.**

Where Parliament has delegated to another authority, such as a minister or a public department, the power to make a statutory instrument<sup>1</sup> or other similar subordinate legislation, some measure of control is usually reserved to Parliament if the exercise of power is of a general nature, and is sometimes reserved if the exercise is of a local nature<sup>2</sup>.

Many instruments are subject to parliamentary proceedings, and all general instruments are scrutinised by a joint select committee of both Houses of Parliament or, in relation to financial instruments, by a select committee of the House of Commons<sup>3</sup>. Special procedures apply in both Houses for the consideration of orders and draft orders under the Human Rights Act 1998<sup>4</sup>, and the Legislative and Regulatory Reform Act 2006<sup>5</sup>. Measures proposed by the General Synod under the Church of England Assembly (Powers) Act 1919 are subject to proceedings in both Houses before the measure may be presented for the royal assent<sup>6</sup>.

1 As to the meaning of 'statutory instrument' see the Statutory Instruments Act 1946 s 1; and **STATUTES** vol 44(1) (Reissue) PARA 1503.

2 For the classification of statutory instruments as local or general see the Statutory Instruments Regulations 1947, SI 1948/1, reg 4; and **STATUTES** vol 44(1) (Reissue) PARA 1506.

3 As to the Joint Committee on Statutory Instruments see **PARLIAMENT** vol 34 (Reissue) PARA 946. As to joint committees see PARA 879 et seq; and as to select committees see PARA 979 et seq.

4 See the Human Rights Act 1998 s 10, Sch 2; **CONSTITUTIONAL LAW AND HUMAN RIGHTS**; and HC Standing Orders (Public Business) (2009) no 152B; HL Standing Orders (Public Business) (2007) nos 41(7) and 73(1)(c).

5 See the Legislative and Regulatory Reform Act 2006 Pt 1 (ss 1-20); and HC Standing Orders (Public Business) (2009) no 141; HL Standing Orders (Public Business) (2007) nos 41(6) and 73(1)(b); and **PARLIAMENT** vol 34 (Reissue) PARA 947.

6 See **PARLIAMENT** vol 34 (Reissue) PARA 731; and **ECCLESIASTICAL LAW** vol 14 PARAS 406-411.

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### **809. Means by which Parliament is supplied with other information.**

Parliament receives documentary information with regard to many matters which enables it to scrutinise the administration of the executive government and its policy in general<sup>1</sup>.

By command of Her Majesty, both Houses of Parliament are supplied with reports on the work of various government departments; reports of, and evidence heard by, royal commissions and other commissions of inquiry; and papers, correspondence and reports dealing with foreign and commonwealth affairs and other subjects which have occupied ministers' attention<sup>2</sup>. In certain cases statutory provision is made to ensure that Parliament is supplied with reports of

proceedings taken under the statute in question or that certain accounts and statistics are laid before both Houses.

It is also possible for either House, by means of an address to the Crown or of an order of the House, to obtain from any public department<sup>3</sup> information on any matter of public importance connected with the work or administration of the department<sup>4</sup>.

In relation to alleged maladministration in connection with actions taken by or on behalf of government departments, members of the House of Commons (and only they) may refer complaints from the public to the Parliamentary Commissioner for Administration<sup>5</sup>. His reports to Parliament are considered by the Select Committee on Public Administration and may form the basis of debate or the questioning of ministers in Parliament<sup>6</sup>.

1 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) p 252 et seq.

2 All such papers, commonly called 'Command Papers', are printed on the authority of the department presenting them (except for the annual estimates, which are printed by order of the House of Commons: see PARA 1032 et seq). Command Papers are presented during the existence of a Parliament by delivery to the Clerk of the Parliaments in the Lords, and to the Votes and Proceedings Office in the Commons: see HL Standing Orders (Public Business) (2007) no 70; HC Standing Orders (Public Business) (2009) no 158. Command Papers are numbered and may be cited as follows: 1836-69, C 1st series stating year and number; 1870-99, C 2nd series stating year and number; 1900-18, Cd stating number only; 1919-56, Cmd stating number only; 1956-86, Cmnd stating number only; 1986 to date, Cm stating number only. As to the Clerk of the Parliaments see PARA 855.

3 In relation to the Privy Council or departments presided over by a Secretary of State, an address is moved to Her Majesty that she will be graciously pleased to give directions that the desired information be supplied; for other departments the House orders the information to be laid before it. For a statement on this distinction and on the power generally see the *First Report from the Select Committee on Procedure* (HC Paper 588-I (1977-78)) Appendix C p 15. As to the privilege attaching to such reports etc see **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 102, 105. As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526. As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355 et seq.

4 In the House of Lords a motion for papers is often made for the purpose of raising a debate upon a subject of public interest, but in the House of Commons this practice is obsolete. In that House, a motion for a return may be made before questions if moved by a minister or, in the case of a motion standing in the name of an unofficial member, agreed to by the department. For examples of papers presented as returns see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 263-264. Papers or accounts presented on the initiative of one of the Houses of Parliament are ordered to be printed by the House concerned: see p 264.

5 See the Parliamentary Commissioner Act 1967 s 5; PARA 945; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

6 See generally the Parliamentary Commissioner Act 1967; **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq; and **LIBEL AND SLANDER** vol 28 (Reissue) PARA 102. As to the Select Committee on Public Administration see PARA 989; and as to select committees see generally PARA 979 et seq.

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## **(2) COMMUNICATIONS WITH THE CROWN**

### **(i) Communications from the Crown to the Two Houses of Parliament**

#### **810. The Crown and Parliament.**

It is no longer customary for the monarch to be personally present in Parliament<sup>1</sup> except when she comes to the House of Lords for the purpose of delivering her Speech from the Throne to both Houses of Parliament at the beginning of each session of Parliament<sup>2</sup>. Direct communication from the Crown to one or other of the Houses of Parliament or to both Houses is made in conformity with the established usage of Parliament and is recognised by both Houses as a constitutional declaration of the wishes of Her Majesty, acting on the advice of her ministers<sup>3</sup>.

1 The monarch is theoretically present in the High Court of Parliament as in other courts: see Hale's Jurisdiction of the House of Lords c 1; Fort de Laud c 8; and 2 Co Inst 186.

2 See PARA 1009 et seq.

3 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 706-711.

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### **811. Communication by commission.**

Except for the delivery of the Speech from the Throne at the opening of each session, the royal functions are now customarily performed by commission under the Great Seal<sup>1</sup>. By virtue of such commissions the pleasure of the Crown is signified to the two Houses of Parliament, (1) at the beginning of every new Parliament, when the House of Commons is directed to choose a Speaker<sup>2</sup> and when the Speaker-elect is approved and confirmed; (2) when the monarch is not present to deliver the speech in person<sup>3</sup>; (3) when Parliament is prorogued<sup>4</sup>; and (4) when royal assent is given by commission<sup>5</sup>.

1 As to the delivery of the Speech from the Throne see PARA 1009 et seq. As to the Great Seal see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 909 et seq.

2 In relation to the election of a Speaker during the course of a session, Her Majesty's pleasure is signified in the Commons by a Minister of the Crown: see PARA 1006. As to the Speaker of the House of Commons see PARAS 931-936.

3 See PARA 1011.

4 See PARA 1019. HL Standing Orders (Public Business) (2007) no 77 requires the commission to be directed unto some of the Lords of the Upper House, thereby expressly excluding the Lord Chancellor if he is not a member of the House: see the *Second Report of the Procedure Committee* (HL Paper 135 (2007-08)).

5 This method of communicating the royal assent has in practice fallen into disuse since the Royal Assent Act 1967: see **PARLIAMENT** vol 34 (Reissue) PARA 835. However, the five peers who are appointed Lords Commissioners for the purpose of proroguing Parliament at the end of a session are directed in the same letters patent to declare the royal assent in the House of Lords: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 654.

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### **812. Communication by message.**

Her Majesty may communicate by message with either House of Parliament singly or, more usually, with both Houses separately<sup>1</sup>. Messages are delivered by one of the Ministers of the Crown, or in the House of Lords by one of the royal household, either in writing under the royal sign manual<sup>2</sup> or orally<sup>3</sup>. In each House it is customary to reply to a message under the royal sign manual by means of an address<sup>4</sup> humbly thanking Her Majesty for her gracious message and, where appropriate, assuring her of the readiness of the House to carry out her recommendations or request<sup>5</sup>.

1 When a message is accompanied by original papers it is occasionally sent to one House and not to the other. When it is necessary to deliver a message from the monarch to both Houses and only one is sitting, the message is delivered to the other House on the day it reassembles.

2 Eg to announce an event of public importance which requires the attention of Parliament, to declare a state of emergency or to make provision for the exercise of royal authority. As to the royal sign manual see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 908.

3 The Queen's consent to put her prerogative and interest at the disposal of Parliament for the purposes of a bill is signified in this way: see **PARLIAMENT** vol 34 (Reissue) PARA 819. Oral messages are also sent on the arrest of a member of either House for trial by a military court-martial: see 180 Lords Journals 43; 196 Commons Journals 178. The recommendation of the Crown to motions involving public expenditure is notified in writing to the Clerk of the House of Commons by the Financial Secretary to the Treasury: see PARA 1059. Her Majesty's desire that her prerogative and interest in so far as they relate to the succession to the Crown should not stand in the way of the consideration by Parliament of any measure providing for the removal of any distinction between the sexes in determining the succession to the Crown was communicated to the Lords by a signed message read to the House by the Lord Chamberlain: see 582 HL Official Report (5th series), 30 July 1997, col 167; and HL Bill 31 (1997-98). An oral message from the Queen approving the appointment of the first Lord Speaker in 2006 was conveyed by the Lord Chamberlain: see 684 HL Official Report (5th series), 4 July 2006, col 121; and HL Standing Orders (Public Business) (2007) no 19(5).

As to the officers of the royal household see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 546.

4 See PARAS 816-817.

5 It is not the practice of the House of Commons to present an address in answer to a message for any kind of pecuniary aid or exceptional provision or grant, the prompt attention by the House to the matter in question being considered a sufficient answer to the demand made by the Crown.

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## **(ii) Communications from the Two Houses of Parliament to the Crown**

### **813. Communication from Parliament to the Crown.**

A communication from the two Houses of Parliament to the Crown<sup>1</sup> is usually made by means of an address<sup>2</sup> which may be either (1) a joint address from the two Houses; or (2) an address from either House or both Houses singly<sup>3</sup>.

1 An address is only presented to the reigning monarch or the regent. However, both Houses send messages, usually of congratulation or condolence, to other members of the Royal Family. Such messages are entrusted in each House to members specially deputed for the purpose, who make known to the House the replies which they receive.

2 Resolutions of the House of Commons have sometimes been presented to the Crown not in the form of an address. The procedure as to the presentation of such resolutions and as to the reply of the monarch is the same as that adopted with regard to an address.

- 3 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 711-715.

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#### **814. Subjects of addresses.**

A joint address<sup>1</sup> or an address from either House of Parliament may be presented on almost any subject connected with the administration or well-being of the country, at home or abroad, or to express congratulation or condolence. However, it is not in accordance with parliamentary usage for an address to refer to a bill pending in either House<sup>2</sup>.

- 1 I.e. an address made jointly by the two Houses of Parliament: see PARA 815.

- 2 See 12 Lords Journals 72, 81, 88; 8 Commons Journals 670. As to the moving and presentation of addresses for the exercise of parliamentary control over delegated legislation see **PARLIAMENT** vol 34 (Reissue) PARA 943 et seq. As to addresses thanking the monarch for the Speech from the Throne see PARAS 1012-1013.

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#### **815. Joint addresses.**

A joint address<sup>1</sup> originates in a resolution, or series of resolutions, which may be made in either House of Parliament. When a motion for an address of this kind has been agreed to by one House, it is communicated to the other House by means of a message setting out the resolution or resolutions and desiring the concurrence of the other House to the presentation of a joint address.

If the second House agrees to the proposal of the first House, it sends a message expressing its agreement and an order is then made by each House with regard to the manner in which the address is to be presented.

- 1 I.e. an address made jointly by the two Houses of Parliament.

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#### **816. Addresses from the House of Lords.**

An address from the House of Lords is agreed to by the House on motion and an order is then made for its presentation to the monarch by the whole House<sup>1</sup> or, more usually, by the Lord Chamberlain<sup>2</sup>, the Captain of the Gentlemen at Arms (the government chief whip)<sup>3</sup> or by certain

lords specially nominated for the purpose<sup>4</sup>. The monarch's answer to an address may be reported on any sitting day at the beginning of business.

- 1 See eg 210 Lords Journals 425; 228 Lords Journals 387.
- 2 See eg the House of Lords Business, Minutes of Proceedings Thursday 11 December 2008, item 13.
- 3 See eg 233 Lords Journals 26.
- 4 See eg 205 Lords Journals 33; 228 Lords Journals 45.

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### **817. Addresses from the House of Commons.**

An address from the House of Commons is agreed to by the House on motion and an order is then made for its presentation to the monarch either by the whole House<sup>1</sup>, or by members of the House being privy counsellors or members of the royal household<sup>2</sup>, or by certain members especially nominated for the purpose by the House<sup>3</sup>.

- 1 See 152 Commons Journals 299; 201 Commons Journals 17, 18, 24, 26; 244 Commons Journals 640.
- 2 See eg 251 Commons Journals 17. This is the usual method employed for the presentation of an address from the Commons. The address is generally presented by the Vice-Chamberlain or Treasurer of the Household (formal offices held by government Whips) who, as soon as possible after receiving the monarch's answer, appears at the bar of the House and is called by the Speaker. He then comes to the table and there reads the monarch's answer and hands it in: see 251 Commons Journals 28. As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526. As to the officers of the royal household see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 546. As to the Speaker of the House of Commons see PARAS 931-936.
- 3 See 137 Commons Journals 94; 246 Commons Journals 547.

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## **(3) RELATIONS BETWEEN THE TWO HOUSES OF PARLIAMENT**

### **(i) Communications**

#### **818. Method of communication.**

As the two Houses of Parliament are entirely distinct and independent bodies, it is necessary that there should be frequent communications between them with regard to the ordinary legislative and other business of the session.

Written messages have superseded the former practice of holding conferences<sup>1</sup>, and are now employed on all occasions when direct intercourse between the Houses is rendered necessary.

1 Conferences between the Houses, whether free (with discussion taking place) or with written communications being handed over, are now obsolete. The last ordinary conference, when written communications were handed over without debate, was in 1860, although it is still theoretically possible for either House to request a conference with reference to amendments to bills disagreed to: see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 715; 83 *Lords Journals* 158, 177; and 106 *Commons Journals* 210, 217, 223.

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### **819. Messages.**

It is the practice for one House of Parliament to send a message to the other House:

- 5 (1) to inform the other House that (a) it has passed a bill and desires the concurrence of the other House to the proposed measure; (b) it agrees to a bill, with or without amendment, which has been sent to it by the other House; (c) it agrees to the amendments made to one of its bills by the other House; (d) it insists, or does not insist, upon its amendments to a bill, in case the other House objects to them; and (e) it proposes new amendments in lieu of those to which the other House has disagreed<sup>1</sup>;
- 6 (2) to obtain agreement to suspend the proceedings on a private bill from one session to the next<sup>2</sup>;
- 7 (3) to request the attendance of officers of the other House as witnesses, or the interchange of documents, reports or evidence<sup>3</sup>; and
- 8 (4) to suggest the appointment of a joint committee<sup>4</sup> or to make proposals with regard to any matter connected with the business or procedure of Parliament to which the assent of both Houses is required<sup>5</sup>.

1 As to the procedure when differences arise between the two Houses with regard to amendments on public bills see PARAS 584, 828. For the provisions of the Parliament Acts 1911 and 1949 see **PARLIAMENT** vol 34 (Reissue) PARAS 831-832. As to money bills under the Parliament Act 1911 see PARA 827.

2 See 209 *Lords Journals* 980; 227 *Lords Journals* 714; 202 *Commons Journals* 364, 369; 250 *Commons Journals* 531.

3 The former practice whereby messages were sent to request the attendance of members of the other House has been superseded by standing orders which give leave to attend committees or sub-committees of the other House 'if his Lordship [the member] thinks fit': see *HL Standing Orders (Public Business)* (2007) no 25; *HC Standing Orders (Public Business)* (2009) no 138. See also PARA 1087.

4 See PARAS 879-881.

5 Eg a joint address from the two Houses to the monarch: see PARA 815. As to a resolution of the House of Commons thanking the House of Lords see PARA 820 note 1.

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### **820. Procedure.**

A message is carried with the bills or other documents to which it refers from one House of Parliament to the other by one of the clerks at the table<sup>1</sup>. The delivery of a message is a purely

formal matter which is attended by no ceremony and, therefore, usually causes no interruption to a debate in either House if one happens to be in progress at the time of its arrival<sup>2</sup>.

In the House of Lords, when the House of Commons clerk who is the bearer of a message from the Commons reaches the bar of the House of Lords, he hands the message to a clerk of that House who comes to the bar to receive it. All messages are recorded in the proceedings and journals of the House. When requisite those messages relating to public bills are read at the table by the clerk as soon as conveniently may be after they have been received.

In the Commons, a message from the Lords is received by the Serjeant at Arms from the hands of a Lords clerk and transferred informally to the table. The message is recorded in the Votes and Proceedings, and the journal<sup>3</sup>; and any action required to be taken is normally set down for a subsequent day. Only if proceedings on the message are to be taken forthwith is it communicated formally to the House by the Speaker<sup>4</sup>.

1 See 87 Lords Journals 159, 160, 165; 110 Commons Journals 253, 254; HL Standing Orders (Public Business) (2007) no 26. The resolution of the House of Commons thanking the House of Lords for the use of their Chamber between 1941 and 1950 was ordered to be communicated by members of the House: 205 Commons Journals 241.

2 HL Standing Orders (Public Business) (2007) no 42(2); see also Erskine May's Parliamentary Practice (23rd Edn, 2004) p 716.

3 As to the Votes and Proceedings see PARA 947; and as to the journal of the House of Commons see PARA 948.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 716; 224 Commons Journals 72. As to the Speaker of the House of Commons see PARA 931 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/1. IN GENERAL/(3) RELATIONS BETWEEN THE TWO HOUSES OF PARLIAMENT/(ii) Control of Public Money/821. The position of the two Houses of Parliament.

## **(ii) Control of Public Money**

### **821. The position of the two Houses of Parliament.**

The House of Commons claims an exclusive privilege<sup>1</sup> in respect of legislation affecting public expenditure and taxation<sup>2</sup>, including local government finance<sup>3</sup>, and denies the right of the House of Lords to initiate or amend provisions of this nature except in so far as the Commons themselves are prepared to relax or waive their privileges<sup>4</sup>.

While the Lords have tacitly acquiesced<sup>5</sup> in the Commons claim as regards initiation and amendment of bills which come within the financial privileges of the Commons, they reserve the right to reject such bills in their entirety<sup>6</sup>. Notwithstanding their disabilities as regards legislation, they are not inhibited from discussing public expenditure and taxation in debate, or from investigating these matters by select committees<sup>7</sup>.

1 The modern practice is based upon the Commons resolutions of 1671 and 1678: see 9 Commons Journals 235, 509. See also the Commons resolutions following the rejection by the House of Lords of the Paper Duty Repeal Bill 1860 and the Finance Bill 1909: 115 Commons Journals 360; 164 Commons Journals 546.

2 The privilege is not extended to cover funds set apart for the purpose of general, but not public, utility. Thus the Commons privileges are not affected by bills imposing charges on the property or revenues of the Church of England or by bills dealing with the property and land revenues of the Crown, the proceeds of which are not consigned by statute to the Consolidated Fund: see the Church Endowment Bill 1843; the Ecclesiastical

Commissioners (England) Bill 1843; the Tithe Bill 1936; and the Waste Lands (Australia) Bill 1845. As to the transfer of the functions of Queen Anne's Bounty to the Church Commissioners see **ECCLESIASTICAL LAW** vol 14 PARA 363. These privileges of the Commons are not affected by provisions conferring general powers to impose taxation in bills dealing with the constitutions of Her Majesty's dominions or other parts of the British Commonwealth: see 164 Commons Journals 392 (South Africa Bill [Lords] 1909); 136 HC Official Report (5th series), 16 December 1920, col 705 (Government of Ireland Bill 1920). As to the meaning of 'Her Majesty's dominions' see **COMMONWEALTH** vol 13 (2009) PARA 707.

3 As to the relaxation of privilege in respect of local government finance provisions embodied in private bills see PARA 822 note 3.

4 See PARA 822.

5 No formal acknowledgement has ever been made by the Lords but their resolution condemning tacking (see PARA 825 note 1) virtually admits their inability to amend bills of supply: see 17 Lords Journals 185. The pre-existing rights and privileges of the Commons are also acknowledged, although not defined, by the Parliament Act 1911 s 6: see PARA 827. As to the history of the relations between the two Houses on matters of finance see 3 Redlich's Procedure of the House of Commons p 114 et seq; Pike's Constitutional History of the House of Lords (1894) p 337 et seq.

6 See PARA 826.

7 The Lords have also taken exception if a message from the Crown for pecuniary aid is sent exclusively to the Commons. Messages respecting the Civil List on 11 March 1936, 16 March 1937 and 18 November 1947 were presented to the Commons alone: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 918. As to select committees see PARA 979 et seq.

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## **822. Nature of the Commons claim to financial privilege.**

The Commons claim that they may treat as a breach of their privileges by the Lords not only the imposition or increase of a charge subject to privilege, but also any alteration, whether by increase or reduction of its amount or duration, mode of assessment, levy, collection, appropriation or management. An alteration in respect of the persons who pay, manage or control the charge or in respect of the limits within which the charge is leviable will also be treated as a breach of privilege<sup>1</sup>.

By standing order the Commons have agreed not to insist upon their privileges, either as regards bills brought from the Lords or as regards amendments made by the Lords to Commons bills, in the case of certain pecuniary penalties, forfeitures and fees embodied in public or private bills<sup>2</sup> and in the case of provisions affecting local rates and certain other charges embodied in private bills<sup>3</sup>.

1 See 50 Official Report (3rd series), 7 August 1839, col 3 (Municipal Corporations (Ireland) Bill 1839); 21 Official Report (4th series), 16 February 1894, col 686 (Local Government (England and Wales) Bill 1893); 133 HC Official Report (5th series), 10 August 1920, col 368 (Public Libraries (Scotland) Bill 1920); 144 HC Official Report (5th series), 15 July 1921, col 1699 (Police Pensions Bill 1921); 176 HC Official Report (5th series), 30 July 1924, col 2210 (Unemployment Insurance (No 2) Bill 1924). Cf also the debate in the House of Lords on an amendment proposed to the Voluntary Schools Bill 1897: see 48 Official Report (4th series), 2 April 1897, col 360.

2 The Commons do not insist upon their privileges (1) when the object of the pecuniary penalty or forfeiture is to secure the execution of the Act or the punishment or prevention of offences; (2) where fees are imposed in respect of benefits taken or services rendered under the Act and in order to secure the execution of the Act, and are not made payable into the Consolidated Fund or in aid of the public revenue and do not form the ground of public accounting; or (3) when the bill embodying the pecuniary penalty, forfeiture or fee is a private bill for a local or personal Act: see HC Standing Orders (Public Business) (2009) no 79.

3 The Commons do not insist upon their privileges when a private bill authorises or affects (1) a toll or charge for services performed, not being in the nature of a tax; (2) any local rate; or (3) the sums payable by way of revenue support grant to local government: see HC Standing Orders (Private Business) (2005) no 191; and see also no 156A. These provisions are extended to provisional order bills and special procedure order bills: see nos 219, 248A. As to the reform of local government finance, the abolition of the system of general rates and its replacement by (a) the uniform business rate, in the case of non-domestic property; and (b) the community charge and then the council tax, in the case of domestic property see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 521; and **LOCAL GOVERNMENT; RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

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### **823. Application of the Commons claim to Lords bills.**

Bills sent down from the House of Lords in a form which infringes the financial privileges on which the Commons insist are either laid aside or postponed for six months by the Commons<sup>1</sup>. The practice is now so uniform that the Lords never deliberately send down a bill of this nature. When it has become apparent, during the progress of bills in the Lords, that they will be regarded as infringing the financial privileges of the Commons, they have been withdrawn or deferred indefinitely<sup>2</sup>.

1 See 8 Commons Journals 311; 206 Commons Journals 290; 490 HC Official Report (5th series), 18 July 1951, col 1246. Contrary to the practice regarding amendments made by the Lords to Commons bills (see PARA 825), the Commons will not waive their privileges in regard to public bills originating in the Lords; but privilege has been waived in regard to a private bill on an explanation by the Speaker that the promoters were not responsible for the infringement and that the offending clauses would be withdrawn: see 128 Commons Journals 194; 215 Official Report (3rd series), 8 May 1973, col 1675. As to the Speaker of the House of Commons see PARA 931 et seq.

2 See 154 Lords Journals 74 (Riot Damages Bill 1922); 184 Lords Journals 113 (Rating and Valuation (Scotland) Bill 1952); 209 Lords Journals 980 (Legal Aid Bill 1963). In the last two cases similar bills were later introduced in the Commons. If the infringement does not appear to be material, one of the methods for avoidance of infringement (see PARA 824) may be adopted in lieu of withdrawal.

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### **824. Method adopted in Lords bills to avoid infringement of Commons privileges.**

When it is desired by the House of Lords to proceed with bills which affect public taxation or expenditure<sup>1</sup> the practice adopted is to insert on the third reading in that House words nullifying the effect of the provisions concerned in general terms<sup>2</sup>. When the bill is reprinted in the House of Commons these words are marked by a black line in the margin and a note added that they were inserted to avoid questions of privilege; the words may then be formally left out by amendment on committee stage, if the charges have received the approbation of the Commons.

1 The expedients described here are used only in respect of a bill of which a minister is prepared to take charge in the House of Commons: see HC Standing Orders (Public Business) (2009) no 80. Bills of aids and supplies are not covered by this practice.

2 The words are 'Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge'.

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## **825. Application of the Commons claim to Lords amendments.**

The Commons will invariably treat as a breach of their privileges any amendment made by the Lords to bills of aid or supply<sup>1</sup>; and in consequence the Lords regularly refrain from going into committee on such bills.

As regards amendments affecting privilege made by the Lords to other bills, the Commons will normally be prepared to waive their privilege as each individual amendment is considered so long as they do not materially infringe the privileges of the Commons. This course will usually be followed where the Lords amendments concern local government finance, and may be followed in other cases where no material infringement of privilege is considered to be involved<sup>2</sup>. When privilege is thus waived an entry is made in the journal<sup>3</sup>, under the direction of the Speaker, recording the fact<sup>4</sup>.

When the Lords amendments necessitate an assertion of the Commons privileges, the disagreement is made on the ground of privilege alone and is so communicated in a message to the Lords. On some occasions when this has been done, the Lords, while not insisting on their amendments, have asserted by resolution that they made no admission in respect of any deduction which might be drawn from the reasons offered by the Commons, and did not consent that these reasons should thereafter be drawn into a precedent<sup>5</sup>. When the Speaker is satisfied that a Lords amendment imposes a charge on the public revenue such as is required to be authorised by resolution of the House and that the charge has not been so authorised, the Speaker declares that he is so satisfied and the amendment is deemed to have been disagreed to<sup>6</sup>.

1 The annual finance and Consolidated Fund Bills are included in this category. See also Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 919-920. The Commons formerly abused their rights by tacking to bills of aids and supplies provisions unconnected with the matter of the bill. This practice was checked by a resolution of the Lords in 1702: see 17 Lords Journals 185. The Lords claim, respected by the Commons under modern usage, is expressed in HL Standing Orders (Public Business) (2007) no 53: 'The annexing of any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to and different from the matter of the said Bill of Aid or Supply, is unparliamentary, and tends to the destruction of constitutional government'.

2 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 921 et seq.

3 As to the journal of the House of Commons see PARA 948.

4 Since 1968 no reason for the waiver need be given. Waiving of this kind is common, and its significance is formally acknowledged in allocation of time orders relating to Lords amendments: see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 924-925. As to the Speaker of the House of Commons see PARA 931 et seq.

5 See 123 Lords Journals 425; 138 Lords Journals 337; 140 Lords Journals 345; 141 Lords Journals 445. See also the debates on the Safeguarding of Industries Bill 1921 (46 HL Official Report (5th series), 15, 16, 18 August 1921, cols 601, 672, 987). However, in the case of the Unemployment Insurance (No 2) Bill 1929, the Lords returned a message insisting on certain amendments disagreed to by the Commons on privilege grounds. Instead of ordering the reasons given by the Lords for insisting on their amendments to be laid aside, or deferring their consideration for three or six months, which was then held to be the correct procedure, the

Commons proposed further amendments to the Lords amendments and to these the Lords agreed: see 185 Commons Journals 179; 234 HC Official Report (5th series), 4 February 1930, col 1861.

6 HC Standing Orders (Public Business) (2009) no 78(3); and see 244 Commons Journal 675.

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## **826. Lords right to reject bills.**

The House of Lords may reject a bill in its entirety without infringing the financial privileges of the Commons. Its power to reject even a bill of aids and supplies has been acknowledged in former times by the House of Commons<sup>1</sup>. The Lords have further maintained that this right includes a right to omit from a bill financial provisions which they are unable to amend because of the Commons privilege, where those provisions form a separate subject from the rest of the bill. This claim of right has been exercised on several occasions<sup>2</sup>.

1 See 3 Hatsell's Precedents of Proceedings in the House of Commons (1818 Edn) (iii) pp 110-157; *Report of the Select Committee on Tax Bills* (HC Paper 414 (1860)).

2 Eg the Coal Mines Bill 1930, in which the Lords omitted two clauses setting up the Coal Mines Reorganisation Commission: see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 927-928.

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## **827. Money bills under the Parliament Act 1911.**

The right of the House of Lords to reject bills with financial provisions, and any power of amendment which it might wish to assert against the privilege of the Commons, was curtailed in the case of certain bills by the Parliament Act 1911<sup>1</sup>.

Under that Act, a 'money bill' means a public bill<sup>2</sup> which in the opinion of the Speaker of the House of Commons<sup>3</sup> contains only provisions dealing with (1) the imposition, repeal, remission, alteration or regulation of taxation; (2) the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, the National Loans Fund or on money provided by Parliament, or the variation or repeal of any such charges; (3) supply; (4) the appropriation, receipt, custody, issue or audit of accounts of public money; (5) the raising or guarantee of any loan or the repayment of one; or (6) subordinate matters incidental to these subjects or any of them<sup>4</sup>. Taxation, money and loans raised by local authorities or bodies for local purposes are excluded<sup>5</sup>. If a money bill, which has been passed by the Commons and sent up to the Lords at least one month before the end of a session, is not passed by the Lords without amendment within a month after it was sent to them, then, unless the Commons direct to the contrary, the bill is to be presented to Her Majesty and becomes an Act of Parliament on the royal assent, without the consent of the Lords<sup>6</sup>. This does not debar the Lords from amending such bills provided they are passed within the month but the Commons are not obliged to consider the amendments. On a few occasions minor amendments have been made by the Lords to such bills and have been accepted by the Commons.

The existing rights and privileges of the House of Commons are expressly preserved<sup>7</sup>.

1 See the Parliament Act 1911 s 1; and the text and notes 2-6. For provisions relating to bills other than money bills see s 2; and **PARLIAMENT** vol 34 (Reissue) PARA 831.

2 Private bills are impliedly excluded under the Act and provisional order bills are expressly excluded: see the Parliament Act 1911 s 5.

3 A money bill must be indorsed with the certificate of the Speaker that it is a money bill when it is sent up to the House of Lords and when it is presented to the monarch for assent; before giving his certificate the Speaker must consult, if practicable, two members appointed from the Chairmen's Panel at the beginning of each session by the Committee of Selection: Parliament Act 1911 s 1(3). The certificate of the Speaker is conclusive for all purposes and may not be questioned in any court of law: s 3. As to the Speaker of the House of Commons see PARA 931 et seq. As to the Chairmen's Panel see **PARLIAMENT** vol 34 (Reissue) PARA 780. As to the Committee of Selection see PARA 989.

4 Parliament Act 1911 s 1(2) (amended by the National Loans Act 1968 s 1(5)).

5 See the Parliament Act 1911 s 1(2).

6 Parliament Act 1911 s 1(1). As to the manner in which the royal assent is given see **PARLIAMENT** vol 34 (Reissue) PARAS 833-835.

7 See the Parliament Act 1911 s 6.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(i) In general/828. The lords spiritual and temporal.

## **2. THE HOUSE OF LORDS**

### **(1) COMPOSITION**

#### **(i) In general**

#### **828. The lords spiritual and temporal.**

The House of Lords is composed of the lords spiritual<sup>1</sup> and the lords temporal<sup>2</sup>, who sit together in one chamber<sup>3</sup>.

1 As to the lords spiritual see PARA 829 et seq. The lords spiritual were excluded from the House of Lords by 16 Car 1 c 7 (Clergy) (1640) (repealed), but were reinstated by 13 Car 2 c 2 (also repealed).

2 As to the lords temporal see PARA 834 et seq.

3 Radical reform of the House of Lords is under discussion, and the government has set out proposals for a wholly or partly elected second chamber: see the White Paper *An Elected Second Chamber: Further Reform of the House of Lords* (Cm 7438) (2008).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(ii) The Lords Spiritual/829. The lords spiritual.

#### **(ii) The Lords Spiritual**

#### **829. The lords spiritual.**

The lords spiritual are the archbishops and such of the bishops of the Church of England as have seats in the House of Lords.

Bishops are appointed by the Crown<sup>1</sup> and their right to sit and vote in the House of Lords is established by ancient usage and by statute<sup>2</sup>. There are two archbishops and 40 diocesan bishops in England<sup>3</sup> but of these only the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester and the next most senior 21 bishops (in order of appointment) are entitled to sit in the House of Lords<sup>4</sup>.

Neither the creation of the bishopric of Manchester in 1847<sup>5</sup> nor the subsequent creation of other new dioceses has altered the number of lords spiritual of the Church of England who receive writs of summons to Parliament<sup>6</sup>.

1 For the mode of appointment see **ECCLESIASTICAL LAW** vol 14 PARA 460.

2 For the origin of the right by which the lords spiritual sit in the House of Lords see Pike's Constitutional History of the House of Lords (1894) pp 161-168; *First Report on the Dignity of a Peer of the Realm*, dated 25 May 1820, p 393. After a bishop has done homage (see **ECCLESIASTICAL LAW** vol 14 PARA 469) he is qualified, whenever the occasion arises, to receive a writ of summons to the House of Lords.

3 This number does not include the Bishop of Sodor and Man, who has no right to sit or vote in the House of Lords. Nor does the Bishop of Gibraltar in Europe, notwithstanding that the diocese forms part of the Province of Canterbury.

4 After the suppression of the monasteries in the reign of Henry VIII, abbots and priors were no longer summoned to Parliament, and from 1550 the number of lords spiritual summoned to Parliament was 26. By the Union with Ireland Act 1800 art 4 s 2, one archbishop and three bishops of the Church of Ireland were also given seats in the House of Lords, but the Irish Church Act 1869 s 13 (repealed) deprived them of their place in Parliament on the disestablishment of the Irish Church on 1 January 1871: see s 2 (repealed).

On and after the date of disestablishment of the Church in Wales (ie 31 March 1920: Welsh Church (Temporalities) Act 1919 s 2), no bishop of the Church in Wales was as such to be summoned or qualified to sit or vote as a Lord of Parliament: Welsh Church Act 1914 s 2(2). As to the issue of writs of summons to English bishops in place of the Welsh bishops previously eligible to receive them see s 2(3); and see further PARAS 831-832.

5 See the Ecclesiastical Commissioners Act 1847 s 2 (repealed). In 1847 there were 26 lords spiritual belonging to the Church of England sitting in the House of Lords, but the number of bishops to be summoned to Parliament was not increased by the creation of the new see (ie the office of bishop of a diocese).

6 Bishoprics Act 1878 s 5. Since the creation of the see of Manchester various Acts and Measures have been passed for the creation of new, or for the reorganisation of old, dioceses. In all such legislation there is a provision that the number of spiritual Lords of Parliament is not to be increased: see eg the Bishopric of St Albans Act 1875 s 7 (repealed); the Bishoprics of Bradford and Coventry Act 1918 s 1 (repealed); and the Bishopric of Leicester Measure 1925 s 8 (repealed). As to Measures see **ECCLESIASTICAL LAW** vol 14 PARA 399 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(ii) The Lords Spiritual/830. Effect of retirement from bishopric by lord spiritual.

### **830. Effect of retirement from bishopric by lord spiritual.**

A lord spiritual retains his seat in the House of Lords only for as long as he holds a bishopric. Since 1976, no bishop can be appointed if he has attained the age of 70 and bishops appointed since that date are obliged to vacate office on reaching that age<sup>1</sup>. Bishops and archbishops are able to resign their office notwithstanding that they have not attained the age of retirement<sup>2</sup>.

1 See the Ecclesiastical Offices (Age Limit) Measure 1975 s 1(1), (3). Certain exceptions to the general rule of retirement at the age of 70 are allowed by the Measure: see ss 1(2), 2, 3. See also the Bishops (Retirement) Measure 1951; and **ECCLESIASTICAL LAW** vol 14 PARAS 485-489.

2 See the Bishops (Retirement) Measure 1986 ss 1, 2, 4, 5; and **ECCLESIASTICAL LAW**.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(ii) The Lords Spiritual/831. Filling of vacancies caused by avoidance of sees.

### **831. Filling of vacancies caused by avoidance of sees.**

When a vacancy occurs among the lords spiritual by the avoidance of the sees of Canterbury, York, London, Durham or Winchester, the vacancy is filled by the issue of a writ of summons to the bishop who is appointed to the vacant see. However, if the vacancy is caused by the avoidance of any other see, a writ of summons is issued to the senior English diocesan bishop who is not already a Lord of Parliament<sup>1</sup>.

1 Bishops Act 1878 s 5. The writ of summons does not issue from the Crown Office until a declaration (made by someone acting on behalf of the bishop who is claiming a seat in the House of Lords, and declared before a commissioner for oaths) has been received by the Lord Chancellor. The declaration must state (1) the date of the consecration of the bishop; (2) the date of the letters patent by which the temporalities of his see were vested in the bishop; and (3) the date of the retirement or death of the previous lord spiritual. When a bishop who is already a Lord of Parliament is translated to some other see, he must claim that a new writ of summons may be issued to him and he must be introduced again into the House of Lords.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(ii) The Lords Spiritual/832. Places and privileges of lords spiritual.

### **832. Places and privileges of lords spiritual.**

The lords spiritual, who wear their episcopal robes of rochet and lawn when they are present in the House of Lords<sup>1</sup>, sit together on the benches immediately on the right of the Woolsack<sup>2</sup>, and, so far as the two archbishops and the bishops of London, Durham and Winchester are concerned, adhere to the seating which has been settled by statute<sup>3</sup>.

The lords spiritual are Lords of Parliament but are not peers<sup>4</sup>. They have the right as Lords of Parliament to be present during the proceedings consequent upon an impeachment of any individual by the House of Commons<sup>5</sup>.

1 In exceptional circumstances bishops can wear other dress when voting in the division lobby: see the *Third Report of the Procedure Committee* (HL Paper 76 (1990-91)).

2 A lord spiritual must speak from the bishops' benches and no lord temporal may speak from either of the two bishops' benches.

3 See the House of Lords Precedence Act 1539 s 3 (amended by the Statute Law Revision Act 1888). The Archbishop of Canterbury sits in the corner seat immediately above the gangway between the bishops' benches and the bench occupied by the members of the government; next to him, 'on the same form and side', sits the Archbishop of York, with bishops next in line of precedence: see s 3 (as so amended). As to the precedence of the archbishops see **ECCLESIASTICAL LAW** vol 14 PARAS 433-434; **PEERAGES AND DIGNITIES**.

4 See HL Standing Orders (Public Business) (2007) no 6. See also **ECCLESIASTICAL LAW** vol 14 PARA 479.

5 See **COURTS** vol 10 (Reissue) PARA 355 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(ii) The Lords Spiritual/833. Prayers in the House of Lords.

### **833. Prayers in the House of Lords.**

It is customary for one of the lords spiritual to read prayers in the House at the beginning of each day's proceedings<sup>1</sup>, and for this purpose a rota is furnished to the House in which certain of the lords spiritual are allotted periods for which they are responsible for this duty<sup>2</sup>.

1 In the absence of a bishop, a peer who is a clergyman of the Church of England reads prayers. If no such peer is present, the Lord on the Woolsack reads them.

2 Ordinarily the bishops, apart from the Archbishops and the Bishops of London, Durham and Winchester, take a week each in turn.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/834. The lords temporal.

### **(iii) The Lords Temporal**

#### **834. The lords temporal.**

The lords temporal comprise (1) life peers, being peers created under (a) the Life Peerages Act 1958<sup>1</sup>, and (b) the Appellate Jurisdiction Act 1876<sup>2</sup>; and (2) excepted<sup>3</sup> hereditary peers of England, Scotland, Great Britain and the United Kingdom<sup>4</sup>.

1 See PARA 843.

2 See PARA 842.

3 ie excepted under the House of Lords Act 1999: see PARA 835 et seq.

4 Hereditary peers of the United Kingdom have been created by the Crown by the exercise of the royal prerogative, and no limit is fixed by statute or otherwise to the number of such peers who may be created. Such peers are ennobled in blood, and their dignities can only be lost by attainder or taken away by or under an Act of Parliament.

The Peerage Act 1963 s 4 discontinued the system established by the Union with Scotland Act 1706 art XXII, by which the peers of Scotland elected 16 of their number to represent them in the House of Lords, and provided that such peers should have the same right to receive writs of summons to the House of Lords as peers of the United Kingdom.

The disqualification which had previously barred female hereditary peers from membership of the House of Lords was removed by the Peerage Act 1963: s 6.

On the Union of Great Britain and Ireland in 1800 provision was made for the election by the peers of Ireland of 28 of their number to represent them in the House of Lords for life: Union with Ireland Act 1800, art 4 para 2. However, in 1922 elections were discontinued, and the last representative peer for Ireland died in 1961. In 1966 the House of Lords agreed to a report of the Committee for Privileges to the effect that the provisions relating to the election of representative peers for Ireland ceased to be effective on the passing of the Irish Free State (Agreement) Act 1922 and that the right to elect such peers no longer existed. Peers of Ireland may petition the House of Lords to have their claims to succession established. Such petitions are referred to the Lord Chancellor, who reports his decision to the House: HL Standing Orders (Public Business) (2007) no 80.

See generally **PEERAGES AND DIGNITIES**.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/835. Hereditary peers excluded by the House of Lords Act 1999.

### **835. Hereditary peers excluded by the House of Lords Act 1999.**

No one may be a member of the House of Lords by virtue of a hereditary peerage<sup>1</sup>. This exclusion from membership applies to all those who were formerly members of the House by virtue of a hereditary peerage, unless they are excepted<sup>2</sup>. The general exclusion covers:

- 9 (1) members of the Royal Family with the right to sit and vote in the House (the Prince of Wales, the Duke of Edinburgh, the Duke of York, the Duke of Gloucester, the Duke of Kent and the Earl of Wessex);
- 10 (2) first holders of a hereditary peerage (of whom there were eight at the time of Royal Assent to the Act)<sup>3</sup>;
- 11 (3) any holder of a peerage by virtue of acceleration, being the eldest son of a hereditary peer who is sitting by virtue of one of his father's peerages while the father is still alive; and
- 12 (4) any holder of a hereditary peerage by virtue of the termination of a peerage in abeyance (where only female co-heirs survive to inherit the peerage and one is preferred by the Crown against another for the peerage)<sup>4</sup>.

The Act deprives excluded hereditary peers of all the privileges of membership of the House of Lords, including the privileges they formerly enjoyed as members of Parliament. The removal of these rights has not prevented the House from deciding to grant some rights to use the facilities of the House to a hereditary peer under the exercise of its own authority<sup>5</sup>.

1 House of Lords Act 1999 s 1.

2 Ie under the House of Lords Act 1999 s 2: see PARA 836.

3 When the House of Lords Act 1999 came into force, hereditary peers of first creation were offered life peerages under the Life Peerages Act 1958 (see PARA 843) so they could remain as members: see Erskine May's Parliamentary Practice (23rd Edn 2004) p 16.

4 See the explanatory notes to the House of Lords Act 1999 para 6.

5 See the explanatory notes to the House of Lords Act 1999 para 7.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/836. Excepted hereditary peers under the House of Lords Act 1999.

### **836. Excepted hereditary peers under the House of Lords Act 1999.**

At any one time 90 people are excepted from the general exclusion of hereditary peers<sup>1</sup>; but anyone excepted as holder of the office of Earl Marshal or performing the office of Lord Great Chamberlain does not count towards that limit<sup>2</sup>.

The general exclusion does not apply to anyone excepted from it by or in accordance with standing orders of the House<sup>3</sup>. Such standing orders provide the following categories of excepted hereditary peer:

- 13 (1) 2 peers elected by the Labour hereditary peers;
- 14 (2) 42 peers elected by the Conservative hereditary peers;
- 15 (3) 3 peers elected by the Liberal Democrat hereditary peers;
- 16 (4) 28 peers elected by the Cross-bench hereditary peers;
- 17 (5) 15 peers, elected by the whole House, from among those prepared to serve as Deputy Speakers or in any other office as the House may require; and
- 18 (6) any peers holding the office of Earl Marshal or performing the office of Lord Great Chamberlain<sup>4</sup>.

Once excepted from exclusion from the House, a person shall so continue for the remainder of his life (or until an Act of Parliament provides to the contrary)<sup>5</sup>.

1    le the exclusion under the House of Lords Act 1999 s 1: see PARA 835.

2    House of Lords Act 1999 s 2(2).

3    House of Lords Act 1999 s 2(1).

4    HL Standing Orders (Public Business) (2007) no 9(1), (2).

5    House of Lords Act 1999 s 2(3).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/837. The election of excepted hereditary peers and the filling of vacancies.

### **837. The election of excepted hereditary peers and the filling of vacancies.**

The initial elections of the 90 excepted hereditary peers<sup>1</sup> were conducted in accordance with arrangements made by the Clerk of the Parliaments<sup>2</sup>. Standing orders must make provision for filling vacancies among the excepted hereditary peers<sup>3</sup>. In any case where the vacancy arises on a death occurring after the end of the first session of the next Parliament after that in which the House of Lords Act 1999 was passed<sup>4</sup>, and the deceased person was excepted in consequence of an election<sup>5</sup>, that provision requires the holding of a by-election<sup>6</sup>.

The Clerk of the Parliaments must maintain and publish a register of hereditary peers (other than peers of Ireland) who wish to stand in any by-election<sup>7</sup>. The by-election is conducted in accordance with arrangements made by the Clerk of the Parliaments, and takes place within three months of the vacancy occurring<sup>8</sup>.

The government has proposed that by-elections for hereditary peers cease, with the overarching intention that hereditary peerage in the House of Lords be phased out altogether<sup>9</sup>.

1    le excepted under the House of Lords Act 1999 s 2: see PARA 836.

2    See HL Standing Orders (Public Business) (2007) no 9(3). In order to stand for election or qualify as an elector, a peer must have registered with the Clerk of the Parliaments: see no 9(4). As to the procedure see no 9(5)-(6). As to the Clerk of the Parliaments see PARA 855.

- 3 House of Lords Act 1999 s 2(4). HL Standing Orders (Public Business) (2007) no 10 makes provision for by-elections to fill vacancies occurring by death among excepted hereditary peers after the end of the initial period: no 10(1).
- 4 House of Lords Act 1999 s 2(4)(a). The Act received Royal Assent on 11 November 1999. During an initial period down to the end of the 2001-02 session, vacancies were filled by runners-up in the first elections held: see HL Standing Orders (Public Business) 2007 no 9(7).
- 5 House of Lords Act 1999 s 2(4)(b).
- 6 House of Lords Act 1999 s 2(4). In the event of the death of a hereditary peer excepted under HL Standing Orders (Public Business) (2007) no 9(2)(i) (see PARA 836 heads (1)-(4)) only the excepted hereditary peers in the group in which the vacancy has occurred is entitled to vote: no 10(2). In the event of the death of a hereditary peer excepted under no 9(2)(ii) (see PARA 836 head (4)) the whole House is entitled to vote: no 10(3). As to procedure see no 10(7).
- 7 HL Standing Orders (Public Business) (2007) no 10(5).
- 8 HL Standing Orders (Public Business) (2007) no 10(6).
- 9 See the Constitutional Reform and Governance Bill (HC Paper (2008-09) no 142) cl 26.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/838. Rights of persons succeeding to, or being granted, a hereditary peerage.

### **838. Rights of persons succeeding to, or being granted, a hereditary peerage.**

Subject to certain exceptions<sup>1</sup>, any hereditary peer not previously in receipt of a writ of summons<sup>2</sup> who wishes to be included in the register maintained by the Clerk of the Parliaments<sup>3</sup> must petition the House and any such petition must be referred to the Lord Chancellor to consider and report upon whether such peer has established his right to be included in the register<sup>4</sup>.

1 See PARA 840.

2 Which is to say either a person who succeeds to a peerage, or is created a hereditary peer. To prove his right to a peerage, when the eldest son of a deceased peer succeeds his father in the title the following evidence must be supplied to the Lord Chancellor before a writ of summons is issued from the Crown Office: (1) certificates of the marriage and of the death or burial of the late peer; (2) a certificate of the birth of the claimant; and (3) if required, the letters patent creating the peerage. A statutory declaration identifying the persons named in the certificates, making the certificates exhibits to the declaration, and stating that the claimant is heir to the peerage, must also be made by a near relative and supplied to the Lord Chancellor. In any case in which the claimant to a peerage is not the eldest son of the deceased peer, further evidence may be required, and the declaration should refer to such certificates as may be produced, or supply the necessary evidence if certificates cannot be produced. If the Lord Chancellor is not satisfied as to the evidence of the succession to a peerage, he so informs the claimant, who may petition the Crown: see the evidence of the Clerk of the Crown in Chancery before the Select Committee of the House of Commons on House of Commons (Vacating of Seats) (HC Paper 278 (1894) pp 18-25).

A hereditary peer of the United Kingdom is invariably created by letters patent under the Great Seal, by the terms of which a right is conferred upon him and his heirs and successors to 'have the name, state, degree, style, dignity, title and honour' of a peer, and to 'have, hold and possess a seat, place and voice' in Parliament: see **PEERAGES AND DIGNITIES** vol 79 (2008) PARA 813 et seq. As to the delivery of the Speech from the Throne see PARA 713 et seq. As to the Great Seal see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 909 et seq.

3 See PARA 837. As to the Clerk of the Parliaments see PARA 855.

4 HL Standing Orders (Public Business) (2007) no 11.

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### **839. Disclaimer of hereditary peerage.**

Any person who succeeds to a peerage of England, Scotland, Great Britain or the United Kingdom may disclaim that peerage for life<sup>1</sup>. The disclaimer of a peerage is irrevocable and its effect is (1) to divest him (and, if he is married, his spouse) of all right or interest to or in the peerage and all titles, rights, offices, privileges and precedence attaching to it; and (2) to relieve him of all obligations and disabilities arising from it, but does not accelerate the succession to that peerage nor affect its devolution on his death<sup>2</sup>.

No other hereditary peerage may be conferred on a person who has disclaimed a peerage<sup>3</sup>.

Disclaimer does not affect any right, interest or power, whether arising before or after the disclaimer, of the person by whom the peerage is disclaimed, or of any other person, to, in or over any estates or other property limited or settled to devolve with that peerage<sup>4</sup>.

1 See the Peerage Act 1963 s 1(1). Disclaimer is effected by instrument of disclaimer delivered to the Lord Chancellor: s 1(1). As to the period in which it must be delivered, the procedure and to whom it applies see s 1(2)-(5), Sch 1 (s 1(2), (3) amended by the House of Lords Act 1999 s 4(1), (2) Sch 1 para 1, Sch 2). See also **PEERAGES AND DIGNITIES** vol 79 (2008) PARA 836.

2 See the Peerage Act 1963 s 3(1) (amended by the House of Lords Act 1999 s 4(2), Sch 2). See also **PEERAGES AND DIGNITIES** vol 79 (2008) PARA 837.

3 See the Peerage Act 1963 s 3(2) (amended by the House of Lords Act 1999 s 4(2), Sch 2). However, a life peerage may be conferred on a person who has disclaimed a hereditary peerage: see the baronies of Hailsham of Saint Marylebone (1970), Home of the Hirsell (1974) and Selkirk of Douglas (1997).

4 Peerage Act 1963 s 3(3).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/840. Disqualifications from membership of the House of Lords.

### **840. Disqualifications from membership of the House of Lords.**

A peer is not entitled to sit in the House of Lords if he is under the age of 21<sup>1</sup>, and is disqualified from receiving a writ of summons and for sitting and voting in the House if he is an alien<sup>2</sup>, is subject to a bankruptcy restrictions order or a debt relief restrictions order<sup>3</sup>, or if he has been convicted of treason until he has been pardoned or has suffered the allotted or any substituted punishment<sup>4</sup>.

The government has proposed that when a member of the House is convicted of a serious criminal offence or is made the subject of a bankruptcy or debt relief restrictions order or undertaking, then that person will cease to be a member of the house of Lords<sup>5</sup>.

The House of Lords does not currently possess the authority to exclude a member permanently<sup>6</sup>, although the government has proposed that the House be given this capacity<sup>7</sup>.

1 See HL Standing Orders (Public Business) (2007) no 2.

2 This disqualification exists both at common law and under the Act of Settlement (1700 or 1701) s 3 (amended by the British Nationality Act 1981 s 52(6), Sch 7; modified by the Electoral Administration Act 2006 s 18, Sch 2). See further **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 231. As to aliens see the British Nationality Act 1981 s 51(4); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 13. As to the exception of citizens of the Republic of Ireland and the Commonwealth from such statutory disqualifications see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 11, 12. A peer who is an alien or a Commonwealth citizen may become a British citizen by naturalisation: see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 37. See further *R v Speyer*, *R v Cassel* [1916] 1 KB 595, DC; affd [1916] 2 KB 858, CA. As to the citation of the Act of Settlement see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 35.

3 See the Insolvency Act 1986 s 426A; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**. When a peer is made subject to a bankruptcy restrictions order, the court, or the Secretary of State in respect of a bankruptcy restrictions undertaking made by the peer, notifies the Speaker of the House of Lords and a record is entered in the Journals: see Erskine May's Parliamentary Practice (23rd Edn, 2004), pp 48-9. The disqualification from membership ceases in accordance with the statutory provisions on bankruptcy: see further **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**. The termination of a peer's bankruptcy may be made known to the House in the same way as his bankruptcy was notified to it: see eg 205 Lords Journals 778.

4 See the Forfeiture Act 1870 s 2; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1818. See also Erskine May's Parliamentary Practice (23rd Edn, 2004) p 49.

5 See the Constitutional Reform and Governance Bill (HC Paper (2008-09) no 142) cl 27.

6 See the Privileges Committee First Report: *The Powers of the House of Lords in respect of its Members* (11 May 2009), Appendix 1; Erskine May's Parliamentary Practice (23rd Edn, 2004) p 50. The House may, however, suspend peers: see PARA 1101.

7 See the Constitutional Reform and Governance Bill (HC Paper (2008-09) no 142) cl 28.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/841. Seating in the House of Lords.

### 841. Seating in the House of Lords.

The right hand side of the Woolsack<sup>1</sup> is known as the spiritual side, and the left hand side the temporal. The distinction is embodied the House of Lords Precedence Act 1539 which provided that when the monarch is seated on the Throne the bishops of the Church of England should sit on his right hand side<sup>2</sup>.

In modern practice, peers who support the government of the day sit on the spiritual side of the House, with the exception of the first two benches nearest the Throne which are occupied by the bishops, the front one being reserved for the two Archbishops and the Bishops of London, Durham and Winchester. Peers who are opposed to the government sit on the temporal side of the House, with the official opposition party occupying the centre block and the benches nearest the Bar of the House. Peers who do not wish to be identified with any political party sit principally on the cross benches by the bar<sup>3</sup>.

A record is kept of the lords who attend the sittings of the House and is entered in the journals<sup>4</sup>.

1 The Woolsack is the seat of the Lord Speaker in the House of Lords Chamber. Introduced by King Edward III (1327-1377) and originally stuffed with English wool as a reminder of England's traditional source of wealth (the wool trade) and a sign of prosperity. Today the Woolsack is stuffed with wool from several countries of the Commonwealth, to symbolise unity. As to the Lord Speaker see PARAS 850, 851.

2 In theory the House of Lords Precedence Act 1539 still applies more generally in the seating arrangements, distinguishing between the different ranks of the peerage and ancient offices of state, and the statute is reproduced as an appendix to the Standing Orders of the House by order of 9 February 1825. However, apart from the placing of the bishops, its provisions are now an anachronism, superseded by seating arrangement

based on party political lines. See further **PEERAGES AND DIGNITIES**; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 212-214.

3 See generally the Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (2007) Ch 1.

4 As to the Lords Journals see PARA 868.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/842. Life peers created under the Appellate Jurisdiction Act 1876.

### **842. Life peers created under the Appellate Jurisdiction Act 1876.**

Under the Appellate Jurisdiction Act 1876, up to 12 persons were appointed salaried Lords of Appeal in Ordinary by the Crown to perform the former judicial function of the House of Lords in its hearing and determination of appeals<sup>1</sup>. This judicial function formerly exercised by the House was transferred to the Supreme Court in 2009<sup>2</sup> and the serving Lords of Appeal in Ordinary became the founding Justices of the Supreme Court<sup>3</sup>.

Any member of the House of Lords who is also a Judge of the Supreme Court is disqualified from sitting and voting in the House, its committees or joint committees<sup>4</sup>.

1 See the Appellate Jurisdiction Act 1876 (repealed). A Lord of Appeal in Ordinary was created a baron for life by letters patent, and so remained a member of the House after retirement from judicial office: see the Appellate Jurisdiction Act 1876 s 6 (repealed). By the terms of the letters patent a Lord of Appeal in Ordinary is created a baron 'to hold the said style of Baron [. . .] aforesaid, unto him the said [. . .] during his life'. See generally **COURTS**.

2 The Supreme Court was established under the Constitutional Reform Act 2005: see **COURTS**.

3 See the Constitutional Reform Act 2005 s 23; and **COURTS**.

4 See the Constitutional Reform Act 2005 s 137(3), (4). A member of the House of Lords who is so disqualified is not for that reason disqualified for receiving a writ of summons to attend that House, but any such writ is subject to the disqualification: see s 137(5).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iii) The Lords Temporal/843. Life peers created under the Life Peerages Act 1958.

### **843. Life peers created under the Life Peerages Act 1958.**

Appointments to life peerages are made by the Crown by letters patent under statute entitling the holders to rank as barons or baronesses and, unless disqualified by law, to receive writs of summons to attend, sit and vote in the House of Lords<sup>1</sup>.

By custom the Crown makes appointments to life peerages on the advice of the prime minister who receives nominations for consideration from other bodies including the opposition party leaders. There is no limit to the number of life peerages that may be created<sup>2</sup>.

The House of Lords Appointment Commission, established by the government and supported by the Cabinet Office, has operated since 2000 to select and make recommendations on new independent members of the House and to vet nominations put forward by the political parties<sup>3</sup>.

1 Life Peerages Act 1958 ss 1, 2 (s 1 amended by the Constitutional Reform Act 2005 ss 145, 146, Sch 17 Pt 2 para 15, Sch 18 Pt 5). For the terms of such letters patent see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730. The peerage expires on the person's death: s 1(2). A life peerage may be conferred on a woman: s 1(3). In precedence, a life peer ranks according to the seniority of his barony. As to the precedence of a life peer's spouse and children see the Royal Warrant dated 21 July 1958. As to disqualification see PARA 840.

2 A total of 233 life peerages were created between 1997 and 2001: see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 12-050 et seq.

3 See the White Paper *Modernising Parliament: Reforming the House of Lords* (1999, Cm 4183). The Committee comprises seven members, three of whom are appointed to represent the main political parties and to ensure expert knowledge of the Lords, and the others including the Chairman, being independent: see the House of Lords Appointment Commission website, available at the time at which this volume states the law at <http://lordsappointments.independent.gov.uk/>.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iv) Leave of Absence and Financial Provisions/844. Grant of leave of absence; proposals for resignation and disclaimer of peerage.

#### **(iv) Leave of Absence and Financial Provisions**

##### **844. Grant of leave of absence; proposals for resignation and disclaimer of peerage.**

Lords are to attend the sittings of the House of Lords or, if they cannot do so, obtain leave of absence which the House may grant at pleasure<sup>1</sup> at any time during a Parliament for the remainder of that Parliament<sup>2</sup>. A lord who has been granted leave of absence is expected not to attend the sittings of the House until the period for which the leave was granted has expired or the leave has ended, unless it be to take the oath of allegiance<sup>3</sup>. If a lord wishes to attend during the period for which the leave was granted, he is expected to give notice to the House accordingly at least one month before the day on which he wishes to attend; and at the end of the period specified in his notice, or sooner if the House so directs, the leave ends<sup>4</sup>.

The government has put forward legislative proposals which would allow a life peer or excepted hereditary peer to resign and disclaim his or her peerage<sup>5</sup>.

1 HL Standing Orders (Public Business) (2007) no 23(1). This order is not to be understood as requiring a lord who is unable to attend regularly to apply for leave of absence if he proposes to attend as often as he reasonably can: no 23(1).

2 HL Standing Orders (Public Business) (2007) no 23(2). On the issue of writs for the calling of a new Parliament the Clerk of the Parliaments in writing asks every lord who was on leave of absence at the end of the preceding Parliament whether he wishes to apply for leave of absence for the new Parliament: no 23(3). As to the office of Clerk of the Parliaments see PARA 855.

3 HL Standing Orders (Public Business) (2007) no 23(4).

4 HL Standing Orders (Public Business) (2007) no 23(5).

5 See the Constitutional Reform and Governance Bill (HC Paper (2008-09) no 142) cls 29, 30.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iv) Leave of Absence and Financial Provisions/845. Financial allowances and expenses.

## 845. Financial allowances and expenses.

Members of the House of Lords receive no salary for the performance of their parliamentary work, but may claim financial support through the Members' Reimbursement Allowances Scheme<sup>1</sup>. The arrangements for reimbursement of members' allowances and expenses are made by resolution of the House and supervised by the House Committee<sup>2</sup>.

Payment of allowances is linked to attendance at sittings of the House, meetings of committees and sub-committees of the House, meetings as a member of the Board of the Parliamentary Office of Science and Technology, or meetings as a member of the Parliamentary Broadcasting Unit Limited<sup>3</sup>. Allowances for which members may claim include: (1) overnight subsistence<sup>4</sup>; (2) day subsistence<sup>5</sup>; (3) travelling expenses<sup>6</sup>; (4) office costs<sup>7</sup>; and (5) free postage costs<sup>8</sup>.

Members who are ministers or office holders<sup>9</sup> are able to recover secretarial expenses incurred in respect of their parliamentary duties<sup>10</sup>. In addition, the Lord Speaker, Chairman of Committees, the Principal Deputy Chairman of Committees, Leader of the Opposition and Opposition Chief Whip may be reimbursed personal travelling expenses from home to the House of Lords<sup>11</sup>. Relevant office holders are also eligible for a further allowance paid by the House<sup>12</sup>. Ministers who are unpaid are entitled to reclaim the same financial support as ordinary members<sup>13</sup>.

1 Members (except those in receipt of a salary as a minister or office holder) are entitled to recover subsistence, office costs and travel expenses incurred in connection with their parliamentary duties: see generally the House of Lords *Members' Reimbursement Scheme: General Guide* (8th Edn, April 2009) para 1, and *House of Lords: Members' Allowances Explanatory Notes* (2009) (accompanying the annual publication of the total expenses claimed by members), both available on the United Kingdom Parliament website, accessible at the time this volume states the law at [www.parliament.uk](http://www.parliament.uk).

2 See Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 735-6. The allowances and their limits are recommended by the Senior Salaries Review Body, which operates with the support of the Cabinet Office. As to resolutions of the House: see eg 576 HL Official Report (5th series), 27 November 1996, cols 273-275.

3 See the House of Lords *Members' Reimbursement Scheme: General Guide* (8th Edn, April 2009) para 4; and *House of Lords: Members' Allowances Explanatory Notes* (2009).

4 Members whose main residence is outside Greater London may claim up to a fixed maximum daily allowance for expenses of overnight accommodation in London while away from their only or main residence; members whose main residence is outside Greater London and who maintain a residence in London for the purpose of attending sittings of the House may claim this allowance towards the cost of maintain such a residence (for example, mortgage interest payment, property repairs, furnishing, cleaning and gardening costs, etc): see the House of Lords *Members' Reimbursement Scheme: General Guide* (8th Edn, April 2009) para 4.4; and *House of Lords: Members' Allowances Explanatory Notes* (2009).

5 This allowance is payable, up to fixed daily maximum, towards the cost of meals and incidental travel not separately recoverable: see the House of Lords *Members' Reimbursement Scheme: General Guide* (8th Edn, April 2009) para 4.5; and *House of Lords: Members' Allowances Explanatory Notes* (2009).

6 Members may: (1) recover the costs of fares incurred in travelling between their principal residence and Westminster for the purpose of attending a sitting of the House or the costs of travel by private car, motorcycle or bicycle; (2) be reimbursed for the costs of journeys made on parliamentary business elsewhere within the United Kingdom; and (3) recover the costs of two return journeys per year travelling on parliamentary duties between the United Kingdom and any European Union institution in Brussels, Luxembourg or Strasbourg or the national parliament of a European Union state or candidate country: see the House of Lords *Members' Reimbursement Scheme: General Guide* (8th Edn, April 2009) para 4.2; *House of Lords: Members' Allowances Explanatory Notes* (2009). The travel expenses of a member's spouse may be reimbursed in connection with a limited number of parliamentary occasions: para 4.3. See also paras 5-14.

7 Members may recover certain office costs including the cost of secretarial help, research assistance and additional expenses: see the House of Lords *Members' Reimbursement Scheme: General Guide* (8th Edn, April 2009) para 4.6.2. There are maximum sums payable for each day of attendance, and in respect of up to an

additional 40 days when the House is not sitting: para 4.6.1, 4.6.3. Members may also claim for broadband internet costs: see para 18.

8 Prepaid envelopes and postcards are available for use by members for correspondence on House of Lords business: see the House of Lords *Members' Reimbursement Scheme: General Guide* (8th Edn, April 2009) para 17.

9 As to those offices in respect of which salaries are payable see the Ministerial and other Salaries Act 1975 ss 1-2, Schs 1, 2; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 219, 423 et seq.

10 See the House of Lords *Members' Reimbursement Scheme: General Guide* (8th Edn, April 2009) para 15.

11 See the Ministerial and other Pensions and Salaries Act 1991 ss 5, 8; the Lords Office-Holders Allowance Order 1991, SI 1991/772; the Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 3) Order 2006, SI 2006/1640; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 425. See also *House of Lords: Members' Allowances Explanatory Notes* (2009)).

12 See the Ministerial and other Pensions and Salaries Act 1991 s 5; and the *House of Lords: Members' Allowances Explanatory Notes* (2009). See also **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 425.

13 See *House of Lords: Members' Allowances Explanatory Notes* (2009).

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#### **846. Parliamentary salaries for certain office holders.**

Salaries are paid to the Lord Speaker, the Chairman and Principal Deputy Chairman of Committees, and the Leader of the Opposition and the Chief Opposition Whip, in the House of Lords<sup>1</sup>. Holders of those offices are also entitled to an allowance, based on the rate of overnight expenses recoverable by other members of the House<sup>2</sup>.

1 See the Ministerial and other Salaries Act 1975 s 1(3A), Sch 2; **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 219, 423 et seq; and Erskine May's Parliamentary Practice (23rd Edn, 2004) p 19.

2 See PARA 845.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(1) COMPOSITION/(iv) Leave of Absence and Financial Provisions/847. Financial assistance to opposition parties.

#### **847. Financial assistance to opposition parties.**

Financial assistance is available to assist the opposition, the second largest opposition party, and the convenor of the Crossbench Peers, in carrying out their parliamentary business<sup>1</sup>.

1 See 576 HL Official Report (5th series), 27 November 1996, cols 267-272; 30 July 2002, cols 817-821; 20 March 2008, col 372. This form of assistance is commonly referred to as Cranborne money (so named after the then leader of the House, Viscount Cranborne). This scheme does not prevent parties continuing to allocate some of the basic financial assistance given to opposition parties in the House of Commons to support activities in the House of Lords, and there is no connection between entitlement to Cranborne money and entitlement to Short money: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 220; and *Standards in Public Life (Fifth Report): The Funding of Political Parties in the United Kingdom* (Cm 4057) (October 1998), para 10.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(2) PROCEDURE AND CONDUCT OF BUSINESS/(i) Conduct of Business generally/848. Manner of conduct of business.

## **(2) PROCEDURE AND CONDUCT OF BUSINESS**

### **(i) Conduct of Business generally**

#### **848. Manner of conduct of business.**

The business of the House of Lords is transacted (1) in the House itself; (2) in committee of the whole House; (3) in any of the committees on legislation which take place off the floor of the House; (4) in select committees; (5) in committees which are appointed for the duration of a session to perform certain duties connected with the business, administration or procedure of the House; (6) in private bill committees; and (7) in joint committees of the two Houses<sup>1</sup>.

<sup>1</sup> As to committees of the House see PARA 870 et seq.

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#### **849. Regulation of conduct of business.**

The conduct of business in the House of Lords and the procedure of the House in general are regulated by its standing orders and by the established practice of the House. Subject to this, the Lords are the sole judges of their own procedure and all questions with regard to the regulation of the proceedings of the House are settled by the House itself<sup>1</sup>.

<sup>1</sup> See the *Standing Orders of the House of Lords relating to Public Business* (HL Paper 147 (2006-07)) and the *Standing Orders of the House of Lords relating to Private Business and Table of Fees* (HL Paper 38 (2005-06)). The standing orders are cited in this title as HL Standing Orders (Public Business) (2007) and HL Standing Orders (Private Business) (2005). For a full account of the procedure and practice of the House see the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2007) issued under the authority of the Procedure Committee and of the House and available from the House authorities.

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### **(ii) Officers of the House of Lords**

#### **A. THE LORD SPEAKER AND DEPUTY SPEAKERS**

##### **850. Office and duties of Lord Speaker and deputy speakers.**

It is the duty of the Lord Speaker ordinarily to attend the House of Lords as Speaker of the House<sup>1</sup>. If the Lord Speaker is absent, her place on the Woolsack or in the chair may be taken either by a deputy speaker<sup>2</sup>, or by a deputy chairman<sup>3</sup>. If neither a deputy speaker nor a deputy chairman is present, the Lords may then choose their own Speaker during that vacancy<sup>4</sup>.

The Lord Speaker sits on the Woolsack and presides over the deliberations of the House, and may also chair Committees of the whole House<sup>5</sup>. She puts the question on all motions which are submitted to the House, provides procedural advice (except at question time when that role lies with the Leader of the House), and speaks for the House on Ceremonial occasions<sup>6</sup>. Since the House of Lords is self-regulating, the Lord Speaker has no power to act in the House without the consent of the House, she is not invested with powers to call the House to order or rule on points of order, she does not call members to speak, and does not select amendments<sup>7</sup>.

1 HL Standing Orders (Public Business) (2007) no 18. The Lord Speaker is elected by the House: see PARA 851. The Speaker of the House of Lords is entitled to a salary (to be paid out of money provided by Parliament) of £103,701 a year: see the Ministerial and other Salaries Act 1975 s 1(3A) (added by SI 2006/1640). See also **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 Several Lords are authorised under the Great Seal from the Queen to act as deputy speakers: see HL Standing Orders (Public Business) (2007) no 18. From time to time the Queen appoints members of the panel of deputy chairmen as deputy speakers: see PARA 853. As to the Great Seal see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 909 et seq. See further R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 12-061.

3 HL Standing Orders (Public Business) (2007) no 18. Deputy Chairmen are appointed by the House: no 18. As to deputy chairmen see PARA 853.

4 HL Standing Orders (Public Business) (2007) no 18. The Woolsack is considered to be outside the limits of the House, and therefore the Lord Speaker, or any other person appointed to act as Speaker, may preside over the House of Lords and put the question without being a peer: see 207 Lords Journals 3.

5 When the Lord Chancellor was ex officio speaker of the House, he was not authorised to take the chair when the House was in Committee. However, following his replacement by an elected Lord Speaker (see PARA 851), the House accepted the recommendation of the Committee on the Speakership of the House that the Lord Speaker should be empowered to take the chair in Committee of the whole House in the Chamber: see the *Speakership of the House: First Report* (HL Paper 92 (2005-2006)).

6 See *The role of the Speaker of the House of Lords* (10 May 2006), available on the House of Lords website, which was accessible on the date at which this volume states the law at [www.parliament.uk](http://www.parliament.uk). The Lord Speaker also has a role outside the chamber, including responsibility for private notice questions, emergency recall during a recess, matters sub judice, chairing the House Committee and sitting on the Procedure Committee, formal responsibility for the security of the Lords part of the Parliamentary estate, and acting as a non-political spokesman for the House at home and abroad: see *The role of the Speaker of the House of Lords* (10 May 2006).

7 This may be contrasted with the position of the Speaker of the House of Commons who does possess these powers: see PARAS 931-936.

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### **851. Election of Lord Speaker.**

An election of the Lord Speaker<sup>1</sup> must be held no more than five years after the previous election, or within three months of the death of the Lord Speaker, or his giving notice of resignation, if sooner<sup>2</sup>. All members of the House of Lords are entitled to stand for election and

to vote, save that Lords who have not taken the oath in the current Parliament, or who are on leave of absence<sup>3</sup>, may not stand or vote, and nor may a Lord who has been successful in two previous elections stand<sup>4</sup>. The election is conducted in accordance with arrangements made by the Clerk of the Parliaments<sup>5</sup>. In the event of a tie between two of the candidates, the matter (if not resolved by the electoral arrangements adopted by the House) must be decided by the drawing of lots<sup>6</sup>. The result of the election is subject to the approval of the Queen<sup>7</sup>. If the House passes a motion for an address to Her Majesty seeking the Lord Speaker's removal from office, the Lord Speaker is deemed to have resigned<sup>8</sup>. The Chairman of Committees<sup>9</sup> may act during any vacancy in the office of Lord Speaker<sup>10</sup>.

1 As to the Lord Speaker see PARA 850.

2 HL Standing Orders (Public Business) (2007) no 19(1). If, after a date has been set a dissolution of Parliament is announced, the applicable deadline must be extended to one month after the opening of the next Parliament: no 19(1). The first election under this procedure, replacing the earlier position of the Lord Chancellor serving ex officio as Lord Speaker of the House, was held in 2006, with voting taking place on 28 June, and the result being declared and appointment taking effect on 4 July. After the Lord Chamberlain signified Her Majesty's approval from the Despatch box, the new Lord Speaker took over from the Lord Chancellor. As to the dissolution of Parliament see PARA 1021 et seq.

3 As to leave of absence see PARA 844.

4 HL Standing Orders (Public Business) (2007) no 19(2). Before they can stand, candidates require a proposer and a seconder, who must themselves be eligible to stand: no 19(2).

5 HL Standing Orders (Public Business) (2007) no 19(3). The Clerk may refer any question concerning the propriety of the electoral process to the Committee for Privileges: no 19(3). In 2006 the election was conducted in one ballot using the alternative vote system: see the *House of Lords Notice of the Election of the Speaker of the House of Lords* (10 May 2006). As to the Clerk of the Parliaments see PARA 855. As to the Committee for Privileges see PARA 886.

6 HL Standing Orders (Public Business) (2007) no 19(4).

7 HL Standing Orders (Public Business) (2007) no 19(5).

8 HL Standing Orders (Public Business) (2007) no 19(8).

9 As to the Chairman of Committees see PARA 852.

10 HL Standing Orders (Public Business) (2007) no 19(6).

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## **B. THE CHAIRMAN AND DEPUTY CHAIRMEN OF COMMITTEES**

### **852. Chairman and Principal Deputy Chairman of Committees.**

At the beginning of every session, or whenever a vacancy occurs in the offices, lords are appointed to fill the salaried offices of chairman and principal deputy chairman of committees throughout the session<sup>1</sup>. The Chairman of Committees is chairman ex officio of all committees of the House of Lords of which he is a member unless the House otherwise directs<sup>2</sup>. In addition to his duties in the House, he exercises a general supervision and control over provisional order confirmation bills, private bills and hybrid instruments<sup>3</sup>. The Chairman of Committees is also the first of the Deputy Speakers appointed by commission<sup>4</sup>. The Principal Deputy Chairman of

Committees, as well as assisting the chairman in his duties, is appointed to act as Chairman of the European Union Committee<sup>5</sup>.

- 1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 214.
- 2 See HL Standing Orders (Public Business) (2007) no 62. As to procedure see PARA 871.
- 3 In this work he has the assistance of Counsel to the Chairman of Committees: see **PARLIAMENT** vol 34 (Reissue) PARAS 876, 887.
- 4 See PARA 850 note 2.
- 5 See PARA 888.

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### **853. Deputy Chairmen of Committees.**

At the beginning of every session, a number of lords are appointed Deputy Chairmen of Committees<sup>1</sup>. Under the resolution for their appointment, these lords are entitled to perform the duties of the Chairman of Committees<sup>2</sup>.

In the event of the absence of the Chairman of Committees, one of the panel of deputy chairmen officiates in his place, and if there is no deputy chairman present some other lord is appointed by the House of Lords to perform his duties. Deputy Chairmen are also authorised to take the place of the Lord Speaker in her absence<sup>3</sup>.

- 1 The Committee of Selection selects and proposes to the House of Lords the names of the panel of lords to act as Deputy Chairmen of Committees: see HL Standing Orders (Public Business) (2007) no 64(5); and see eg 209 Lords Journals 27. From time to time the Queen appoints members of the panel of deputy chairmen as deputy speakers.
- 2 See 178 Lords Journals 242. As to the constitution and duties of the Committee of Selection see PARA 889.
- 3 See PARA 850.

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## **C. PERMANENT OFFICERS**

### **854. Officers in attendance upon the House.**

The principal permanent officers of the House of Lords are the Clerk of the Parliaments<sup>1</sup>, the Clerk Assistant and the Reading Clerk<sup>2</sup>, who sit at the table during the sittings of the House, and the Gentleman Usher of the Black Rod<sup>3</sup>, who is also present while the House is sitting.

- 1 See PARA 855.

2 See PARA 856.

3 See PARA 857.

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### **855. The Clerk of the Parliaments.**

The Clerk of the Parliaments is the head of the administration of the House of Lords and its principal adviser on procedure and other matters<sup>1</sup>. He is appointed under letters patent by the Crown, must exercise the duties of his office in person and can be removed from office only by the Crown upon an address of the House of Lords for that purpose<sup>2</sup>.

In addition to his duties connected with the judicial work of the House<sup>3</sup>, the Clerk of the Parliaments is required to make true entries and records of the things passed in the House. He signs all orders and other official communications; he is the custodian of the records and manuscripts preserved at the House; he indorses all bills which are sent to the House of Commons; he conveys messages between the two Houses; he pronounces the royal assent to bills when assent is given by royal commission and he is responsible for the accuracy of the text of Acts and Measures. He is also the accounting officer for the House of Lords<sup>4</sup>. The individual who for the time being is by letters patent appointed to the office of the Clerk of the Parliaments is also a corporation sole by the name of the 'Corporate Officer of the House of Lords'<sup>5</sup>.

1 Other Clerks in the House of Lords (except the Clerk Assistant and the Reading Clerk) are appointed by the Clerk of the Parliaments and are removable by him: see the Clerk of the Parliaments Act 1824 s 5. As to the Clerk Assistant and the Reading Clerk see PARA 856.

2 See the Clerk of the Parliaments Act 1824 s 2. The House is informed by the Lord Chancellor of the appointment of a new Clerk of the Parliaments and the letters patents are read at the table of the House. The newly appointed Clerk of the Parliaments, standing at the table, then makes a declaration of allegiance to the Crown and promises to carry out the duties of his office: 207 Lords Journals 428.

3 As to such duties see **COURTS** vol 10 (Reissue) PARA 371.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 215.

5 See the Parliamentary Corporate Bodies Act 1992 s 1; and PARA 990.

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### **856. The Clerk Assistant and the Reading Clerk.**

The Clerk Assistant and the Reading Clerk are nominated and appointed by the Lord Speaker<sup>1</sup>, subject to the approval of the House of Lords, and when so appointed and approved they can be removed from office only by order of the House of Lords<sup>2</sup>.

The Clerk Assistant prepares the minutes of proceedings of the House. The Reading Clerk reads aloud in the House all prorogation and other commissions, and letters patent and writs of

summons at the introduction of newly created peers. In addition to these invariable duties, the Clerk Assistant and the Reading Clerk also undertake such other functions as the Clerk of the Parliaments may from time to time assign to them<sup>3</sup>.

1 See PARA 850.

2 See the Clerk of the Parliaments Act 1824 s 3 (amended by the Constitutional Reform Act 2005 s 18, Sch 6 para 1(2)). For the procedure observed on these appointments see 207 Lords Journals 428.

3 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 215-216.

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### **857. The Gentleman Usher of the Black Rod.**

The Gentleman Usher of the Black Rod ('Black Rod') is the principal officer of the Order of the Garter and is appointed by the Crown by letters patent under the Garter Seal<sup>1</sup>. He is present when the House of Lords sits, and acts as the messenger of the Queen whenever the attendance of the Commons is required. He is also present at the introduction of a new peer<sup>2</sup>. In addition, he supervises the admission of strangers and has duties connected with the carrying out of the orders of the House in the commitment of offenders for contempt and in dealing with disorder and disturbance<sup>3</sup>. He is appointed as its Agent by the Administration and Works Sub-Committee of the House of Lords' Offices Committee, and on its behalf is responsible for accommodation, services and security in the House of Lords' area of the Palace of Westminster. Black Rod is also appointed, by letters patent under the Great Seal, to the office of Serjeant-at-Arms. In that capacity he attends the Lord Speaker or the lord acting as Speaker<sup>4</sup>.

The Yeoman Usher and Deputy Serjeant-at-Arms acts as the deputy of the Gentleman Usher and Serjeant-at-Arms for such of the above duties and functions as may be assigned to him by Black Rod<sup>5</sup>. In particular, he attends the Lord Speaker in carrying the mace in and out of the chamber<sup>6</sup>.

1 The House is informed of the appointment of a new Gentleman Usher of the Black Rod by the Leader of the House: 203 Lords Journals 80.

2 See PARA 1002.

3 See HL Standing Orders (Public Business) (2007) no 13.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 217-218.

5 See HL Standing Orders (Public Business) (2007) no 13.

6 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 218.

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### **858. Clerk of the Crown in Chancery.**

The Clerk of the Crown in Chancery and his deputy are also officers of the House of Lords. The clerk has responsibility (to the Lord Chancellor) for the issue of writs of summons and for the preparation of letters patent creating a peerage and for the preparation of certain documents, including commissions for royal assent and prorogation, by which the monarch's commands are conveyed to the House. He takes a part in the signification by commission of royal assent to Acts of Parliament, and in the introduction of a Clerk of the Parliaments<sup>1</sup>.

<sup>1</sup> See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 216-217; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 913.

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### **(iii) Sittings of the House of Lords and Arrangement of Business**

#### **859. Meeting of the House.**

When the House of Lords is in session it meets on Mondays to Thursdays inclusive and occasionally on Fridays. Starting times for business may be varied, and are currently 2.30 pm on Mondays and Tuesdays, 3 pm on Wednesdays, 11 am on Thursdays, and 10 am on sitting Fridays. The session is interrupted by extended adjournments, commonly called recesses, which normally take place in the summer (lasting between two and three months), at Christmas (usually lasting three weeks) and at Easter and the Spring Bank Holiday (usually lasting some ten days each). At the start of each day's sitting, the Lord Speaker, preceded by the mace and the purse and followed by the Gentleman Usher of the Black Rod, enters the House from below the bar and takes his seat on the Woolsack<sup>1</sup>.

<sup>1</sup> As to the woolsack see PARA 841 note 1.

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#### **860. Business of the House.**

Business which is transacted in the House of Lords is divided into public and private business<sup>1</sup> and consists of notices and orders of the day<sup>2</sup>. Such business includes the first, second and third readings of all bills and the report stage of public bills. Other categories of business transacted in the House include certain questions and motions. Oral questions<sup>3</sup> and questions for short debate<sup>4</sup> may be addressed by a member of the House to Her Majesty's government or to lords holding certain offices<sup>5</sup>. Lords may also move motions. After a motion has been moved it must be proposed in the form of a question from the Woolsack or the chair before debate takes place upon it<sup>6</sup>.

<sup>1</sup> Private business includes the consideration of private bills and of the standing orders of the House which relate to them.

2 An order of the day is a matter the consideration of which has been fixed by an order of the House for a particular day.

3 These were formerly called starred questions as an asterisk is attached to them indicating that they are asked for information only. No debate may take place on them and supplementary questions must be confined to the subject of the original question: see HL Standing Orders (Public Business) (2007) no 35. From Monday to Thursday, four oral questions may be asked each day. On Fridays, there are no oral questions. Question time is subject to a 30-minute time limit each day. See generally Erskine May's Parliamentary Practice (23 Edn, 2004) pp 510-511.

4 These were formerly called unstarred questions giving rise to debate. Debates on Questions for Short Debate are subject to a 90-minute time limit, unless they are taken during the dinner break, in which case they are subject to a one-hour time limit. They may also be taken in Grand Committee, when a one-hour or 90-minute time limit applies: as to Grand Committees see **PARLIAMENT** vol 34 (Reissue) PARA 764. See generally Erskine May's Parliamentary Practice (23 Edn, 2004) pp 510-511. As to the conduct of debates see PARA 865.

5 The Leader of the House may be questioned on matters concerning procedure and the Chairman of Committees on matters relating to the duties of his office.

6 See HL Standing Orders (Public Business) (2007) no 29. Debate must be relevant to the question before the House, and where more than one question has been put the debate must be relevant to the last question so proposed until it has been disposed of: no 29. Except in the case of the address in reply to the Speech from the Throne it is not the practice for motions to be seconded. A motion may be opposed by a direct negative or by means of an amendment or by moving the 'next business' motion: see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 518-519. After a motion has been submitted to the House it may be withdrawn only by leave of the House, which must be unanimous.

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### **861. Order of business.**

The House of Lords proceeds with the notices and orders of each day in the order in which they are entered on the order paper<sup>1</sup>. This order is governed by the priority in which each notice is received at the table<sup>2</sup>, provided that (1) oral questions are entered first<sup>3</sup>; (2) subject to the discretion of the Chairman of Committees, private business is entered before public business<sup>4</sup>; (3) notices relating to the business of the House and, if he so desires, business of the Chairman of Committees (such as consideration of reports from sessional committees) are entered before other public business except oral questions<sup>5</sup>; (4) on all days except Thursdays, notices and orders relating to public bills, Measures, affirmative instruments and reports from select committees of the House have precedence over other public business<sup>6</sup>; (5) on Thursdays, notices of motions have precedence over notices and orders relating to public bills, Measures and delegated legislation<sup>7</sup>; (6) any motion relating to a report from the Delegated Powers and Regulatory Reform Committee on a draft order<sup>8</sup> must be entered before a motion to approve that draft order<sup>9</sup>; (7) any motion relating to a report from the Joint Committee on Human Rights on a remedial order or draft remedial order<sup>10</sup> must be entered before a motion to approve that order or draft order<sup>11</sup>; and (8) questions for short debate are entered last<sup>12</sup>. Business of which notice is not necessary is usually taken after oral questions<sup>13</sup>. Business may be interrupted at any time for royal assent by commission<sup>14</sup>.

1 As to the arrangement of business generally see HL Standing Orders (Public Business) (2007) nos 40-46.

2 See HL Standing Orders (Public Business) (2007) no 41.

3 HL Standing Orders (Public Business) (2007) no 41 proviso (1). As to oral questions see PARA 860.

- 4 HL Standing Orders (Public Business) (2007) no 41 proviso (2).
- 5 HL Standing Orders (Public Business) (2007) no 41 proviso (3).
- 6 HL Standing Orders (Public Business) (2007) no 41 proviso (4). 'Public business' in the text refers to the business mentioned in heads (1)-(3): no 41 proviso 4.
- 7 HL Standing Orders (Public Business) (2007) no 41 proviso (5).
- 8 le a draft order laid under the Regulatory Reform Act 2001: see **PARLIAMENT** vol 34 (Reissue) PARA 947.
- 9 HL Standing Orders (Public Business) (2007) no 41 proviso (6). As to the Delegated Powers and Regulatory Reform Committee see **PARLIAMENT** vol 34 (Reissue) PARAS 739, 947.
- 10 le a remedial order or draft remedial order laid under the Human Rights Act 1998 Sch 2: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Joint Committee on Human Rights see PARA 989.
- 11 HL Standing Orders (Public Business) (2007) no 41 proviso (7). Subject to heads (4)-(7) in the text, the precedence of notices and orders relating to public bills, Measures, affirmative instruments and reports from select committees of the House may be varied on any day at the convenience of the House: no 41 proviso (8).
- 12 HL Standing Orders (Public Business) (2007) no 41 proviso (9). As to questions for short debate see PARA 860.
- 13 This includes personal statements, statements as to future business, public petitions, questions asked by private notice, presentation of bills, reception of messages from the House of Commons and questions of privilege. When a statement is made by a minister in the House of Lords it is also taken at this point. When a statement made in the House of Commons is repeated in the House of Lords it is taken at a suitable moment after the statement has been made in the Commons. When a lord presents a public petition, he may not make a speech, and no debate may follow the presentation of the petition. Every petition which is presented to the House must bear the signature of the lord who presents it: see HL Standing Orders (Public Business) (2007) no 75(1). No petition with regard to a bill which is not before the House, or which has been rejected by the House, is received, nor will the House receive any petition for a grant of public money or for compounding a debt to the Crown unless it is recommended by the Crown. As to petitions on private bills see **PARLIAMENT** vol 34 (Reissue) PARAS 850-852, 859-863, 881 et seq.
- 14 As to royal assent by commission see **PARLIAMENT** vol 34 (Reissue) PARA 835; and see further Erskine May's Parliamentary Practice (23rd Edn, 2004) p 654.

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## **862. Adjournment of the House.**

When the business upon the order paper has been disposed of or at any hour which may be determined upon in view of the business before the House of Lords<sup>1</sup>, it is usual for a member of the government to move the adjournment<sup>2</sup>. After this motion has been put from the Woolsack, the Lord Speaker, preceded by the mace, leaves the House by the bar, and the sitting is at an end<sup>3</sup>.

1 If a debate is adjourned, the House, without notice given, may make an order for the resumed debate to be taken first, either at some later hour of the evening, or on some future sitting day to be then fixed: see HL Standing Orders (Public Business) (2007) no 46.

2 The adjournment of the House may be effected by means of a motion made by any lord at any time during the course of the sitting. If objection is taken to any such motion, the question is decided by a division.

3 As to adjournment see generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 517-519.

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#### **(iv) Quorum**

##### **863. Quorum of the House and of a committee of the whole House.**

Three lords constitute a quorum of the House of Lords and of a committee of the whole House<sup>1</sup>. However, if, on a division upon a bill or upon a question for the approving or disapproving of subordinate legislation, less than 30 lords have voted, the Lord Speaker or the lord in the chair must declare the question to be not decided, and the debate upon it stands adjourned to a subsequent sitting<sup>2</sup>. If such division takes place when the House is in committee, the Chairman must declare the question not decided, whereupon the House resumes, and will be again in Committee at a subsequent sitting<sup>3</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 501.

2 See HL Standing Orders (Public Business) (2007) no 58. As to the Lord Speaker see PARA 850.

3 See HL Standing Orders (Public Business) (2007) no 58.

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#### **(v) Maintenance of Order and Conduct of Debates**

##### **864. Maintenance of order.**

The rules as to the maintenance of order in the House of Lords are either laid down in the standing orders of the House<sup>1</sup> or sanctioned by usage.

1 See HL Standing Orders (Public Business) (2007) no 20 (order in the House); no 22 (lords not to converse in the House whilst it is sitting); no 33 (asperity of speech to be avoided); and no 34 (quarrels to be prevented).

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##### **865. Conduct of debates.**

Lords may speak upon any question which is before the House of Lords, or upon any question of order arising out of the debate<sup>1</sup>. They must speak standing and (if they are men) without a hat except by permission of the House<sup>2</sup>, and must address their speeches to the rest of the lords in general and not to the lord on the Woolsack or in the chair<sup>3</sup>.

A lord may not speak more than once to any motion except (1) when the House is in committee<sup>4</sup>; (2) as the mover of a motion in reply<sup>5</sup>; or (3) with the leave of the House, which may be granted only (a) to a lord to explain himself in some material point of his speech if no new matter is introduced<sup>6</sup>, or (b) to the Chairman of Committees, or in his absence a deputy chairman, the chairman of a select committee on the report of such a committee or a Minister of the Crown<sup>7</sup>.

No lord may speak more than once to any question for short debate except, with the leave of the House, for the purpose of explaining himself in some material point of his speech (no new matter being introduced)<sup>8</sup>.

If two or more lords rise to speak at the same time the House decides, if necessary by means of a division, which of them it will hear first.<sup>9</sup>

1 Matters awaiting or under adjudication in any court may not be referred to in any motion or debate upon a motion or in any question, including a supplementary question. This is subject to the proviso that where a ministerial decision is in question, or in a case which concerns issues of national importance, reference to the decision or to the issue may be made at the discretion of the Leader of the House. Twenty-four hours' notice is required of any proposal to refer to a matter which is sub judice: see the *First Report of the Select Committee on Procedure of the House* (HL Paper 9 (1994-95)).

2 HL Standing Orders (Public Business) (2007) no 27. Disabled lords may sit and women peers may wear a hat when speaking, without seeking the permission of the House: see 198 Lords Journals 59.

3 HL Standing Orders (Public Business) (2007) no 28.

4 HL Standing Orders (Public Business) (2007) no 31(1)(a).

5 HL Standing Orders (Public Business) (2007) no 31(1)(b).

6 HL Standing Orders (Public Business) (2007) no 31(1)(c)(i).

7 HL Standing Orders (Public Business) (2007) no 31(1)(c)(ii). As to the Chairman of Committees see PARA 852.

8 HL Standing Orders (Public Business) (2007) no 31(2).

9 As to the conduct of business see Erskine May's Parliamentary Practice (23rd Edn, 1997) p 521.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(2) PROCEDURE AND CONDUCT OF BUSINESS/(vi) Procedure on Divisions and the Right to Protest/866. Procedure on divisions.

## **(vi) Procedure on Divisions and the Right to Protest**

### **866. Procedure on divisions.**

At the conclusion of a debate the lord on the Woolsack or the lord in the chair puts the question, proceeds to collect the voices and announces his decision as to the majority of 'contents' or 'not contents'<sup>1</sup>.

If his decision is challenged, the bar is ordered to be cleared<sup>2</sup> and during the three minutes thereafter two tellers are appointed by both contents and not contents<sup>3</sup>. If tellers for both sides have been appointed, after three minutes the question is again put<sup>4</sup>. If the challenge is repeated, a division takes place and the result is announced by the lord on the Woolsack or in the chair<sup>5</sup>.

If there is an equality of votes in relation to bills and subordinate legislation, no proposal to reject or amend a bill, instrument or any motion relating to the stages of a bill is agreed to<sup>6</sup>; in relation to all other matters, if there is an equality of votes, the question is decided in the negative<sup>7</sup>.

- 1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 520.
- 2 See HL Standing Orders (Public Business) (2007) no 54(1).
- 3 See HL Standing Orders (Public Business) (2007) no 54(1).
- 4 See HL Standing Orders (Public Business) (2007) no 54(1). If tellers have not been appointed a division cannot take place and the lord on the Woolsack or in the chair must declare the question decided in favour of the side which has appointed tellers: see no 54(2). Division lists are printed with the minutes of proceedings and in the journals: see no 59.
- 5 See HL Standing Orders (Public Business) (2007) no 54(3), (4). A lord may vote on a division even if he did not hear the question put: no 54(5). As to quorum see PARA 863. The ancient practice of voting by proxy was, in effect, abolished in 1868: see no 61. As to votes counted in the House see no 55; and as to votes in the wrong lobby see no 56. If any lord votes in both lobbies in one division his name is struck off both lists and his vote is disregarded: see 434 HL Official Report (5th series) col 408.
- 6 See HL Standing Orders (Public Business) (2007) no 57(1), (2), (4).
- 7 See HL Standing Orders (Public Business) (2007) no 57(3).

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### **867. Right to protest.**

In addition to voting upon a question, any lord may record his dissent, with or without his reasons for objecting, to a decision of the House of Lords<sup>1</sup>, and every such protest is entered in the journals.

- 1 See HL Standing Orders (Public Business) (2007) no 60.

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## **(vii) Journals of the House of Lords and Minutes of Proceedings**

### **868. Journals of the House.**

The journals of the House of Lords, which are admissible as evidence of the facts of parliamentary proceedings recorded in them<sup>1</sup>, are compiled in the Journal Office<sup>2</sup> from the manuscript minutes and notes of proceedings made by the clerks at the table during the sittings of the House<sup>3</sup>.

The journal of each session is printed and laid on the table of the House<sup>4</sup>.

1 See the Evidence Act 1845 s 3; and **CIVIL PROCEDURE** vol 11 (2009) PARA 890.

2 The published series of journals of the House of Lords dates from 1510. When they are required as evidence in any court, a copy of the passage in question, authenticated by the signature of the Clerk of the Parliaments, may be produced. As to the journals see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 252-253. See also **CIVIL PROCEDURE** vol 11 (2009) PARA 890.

3 The House, on motion made, may order an entry in the journals to be amended, vacated or altogether expunged, and also may order any resolution, report, letter of thanks or other document to be entered in the journals.

4 See 39 Lords Journals 759.

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### **869. Minutes of proceedings.**

The minutes of the proceedings of the House of Lords, together with a list of causes and of the notices and orders of the day which have been put down for the future consideration of the House and a list of all bills in progress, are drawn up, under the authority of the Clerk of the Parliaments, at the close of each day's sitting, and are printed<sup>1</sup>.

1 As to the minutes of proceedings see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 252. As to the Clerk of the Parliaments see PARA 855.

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## **(3) COMMITTEES OF THE HOUSE OF LORDS**

### **(i) Committee of the whole House**

#### **870. Appointment.**

The House of Lords resolves itself into a committee of the whole House on the motion 'That the House do now resolve itself into a committee' being agreed to. A committee of the whole House is used for the consideration of a bill<sup>1</sup> or for some other purpose<sup>2</sup>.

1 As to the procedure on a public bill in committee of the whole House see **PARLIAMENT** vol 34 (Reissue) PARAS 755-761.

2 See HL Standing Orders (Public Business) (2007) no 63. The House has resolved itself into committee to consider draft standing orders: see 204 Lords Journals 138.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/2. The House of Lords/(3) Committees of the House of Lords/(i) Committee of the whole House/871. Procedure.

### **871. Procedure.**

When the House of Lords goes into committee the Lord Speaker leaves the Woolsack and she or the Chairman of Committees takes the chair at the table of the House<sup>1</sup>.

As soon as the business for which the committee has been appointed has been disposed of or whenever it is decided to bring the proceedings of the committee to a conclusion, the House is resumed by means of a question to that effect put by the lord acting as chairman. If this is agreed to, he leaves the chair and goes to the Woolsack and reports the results of the committee's deliberations to the House<sup>2</sup>.

1 See HL Standing Orders (Public Business) (2007) no 63. In practice, the chairmanship of a Committee of the whole House is normally shared, with the Lord Speaker commencing proceedings and a duty rota of the Chairman and Deputy Chairmen operating. See also the Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (2007) Ch 7. As to the Chairman of Committees see PARA 852.

2 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 554. On rare occasions, if the Lord Speaker or another Deputy Speaker takes over the Woolsack, the lord who was in the chair may report the bill from the government front bench.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/2. The House of Lords/(3) Committees of the House of Lords/(ii) Select Committees/872. Purposes for which select committees are appointed.

## **(ii) Select Committees**

### **872. Purposes for which select committees are appointed.**

Select committees may be appointed by the House of Lords (1) to inquire into and report upon any subject with regard to which the House desires a full investigation to be made; and (2) to consider and, if necessary, hear evidence with regard to the provisions of any bill which has been read a second time by the House<sup>1</sup>.

1 As to the powers of select committees see further PARA 876; and as to procedure see PARA 877.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/2. The House of Lords/(3) Committees of the House of Lords/(ii) Select Committees/873. Scope of inquiry.

### **873. Scope of inquiry.**

When a select committee is appointed to inquire into and to report to the House of Lords upon any given subject, the scope of its inquiry is defined and limited by the order of reference by which it is appointed. However, when a bill is referred to the consideration of a committee, the bill itself constitutes the order of reference to the committee whose duty it is to examine, and,

if necessary, to amend, the provisions of the proposed measure, and then to report it to the House<sup>1</sup>.

1 As to the report see PARA 878.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(ii) Select Committees/874. Extension or amendment of order of reference.

#### **874. Extension or amendment of order of reference.**

After a select committee has been appointed, if it is deemed advisable or found necessary to authorise it to consider matters which were not originally referred to it, any member of the House of Lords may move that an instruction be given to the committee either extending or amending the terms of its order of reference<sup>1</sup>.

1 A mandatory instruction may also be moved to compel a select committee to do something which it already has the power to do if it wishes: see **PARLIAMENT** vol 34 (Reissue) PARA 757.

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#### **875. Appointment and meeting.**

A select committee is appointed on motion<sup>1</sup>, and the names of the lords who are to serve on it<sup>2</sup> are proposed to the House of Lords by the Committee of Selection<sup>3</sup>. The Committee of Selection may also propose the name of the lord who is to act as chairman of the committee<sup>4</sup>, but the power to appoint its own chairman can be conferred upon the select committee<sup>5</sup>.

The date and hour for the first meeting of a select committee are fixed by the House, but its subsequent meetings are determined by the committee itself<sup>6</sup>.

1 Notice of such a motion must be given in the order paper, and notice is also required of the motion for naming the lords to serve on a committee, or for adding any lord to a committee, or for substituting any other lord for one already appointed to serve on a committee: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 718.

2 There is no rule as to the number of members of a select committee.

3 See HL Standing Orders (Public Business) (2007) no 64(2). As to the constitution and duties of this committee see PARA 889.

4 See HL Standing Orders (Public Business) (2007) no 64(3).

5 If no such appointment is made or power conferred, the Chairman of Committees, if he is a member (see PARA 852), is the chairman of the committee ex officio: see HL Standing Orders (Public Business) (2007) no 62.

6 A select committee may sit during an adjournment of the House, and may adjourn from time to time without obtaining the leave of the House.

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### **876. Powers.**

A select committee of the House of Lords does not need special powers in order to take evidence or to meet concurrently with select committees of the House of Commons<sup>1</sup>. It cannot, however, compel the attendance of witnesses or examine them upon oath, nor can it order the production of papers, unless it obtains the authority of the House to do so.

By order of the House, a select committee may be given the following powers:

- 19 (1) to adjourn from place to place<sup>2</sup>;
- 20 (2) to appoint sub-committees, and to enable a sub-committee to appoint its own chairman;
- 21 (3) to co-opt other members of the House to serve on sub-committees<sup>3</sup>;
- 22 (4) to make more than one report to the House, and to make a report when the House is not sitting;
- 23 (5) to print minutes of evidence separately from the committee's report;
- 24 (6) to take into consideration the proceedings and evidence of the previous session;
- 25 (7) to hear parties by counsel; and
- 26 (8) to appoint specialist advisers<sup>4</sup>.

1 See HL Standing Orders (Public Business) (2007) no 68.

2 ie to meet elsewhere than in the House of Lords.

3 This power is sometimes granted to the sub-committee itself.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 722-724. See also the recommendations of the Procedure Committee on the powers of select committees (agreed to by the House 26 March 2009): *First Report of the Procedure Committee* (HL Paper 39 (2008-09)) paras 13-17.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(ii) Select Committees/877. Procedure.

### **877. Procedure.**

Unless the orders of reference have otherwise determined, the quorum for a select committee of the House of Lords is the same as that for the House, namely three<sup>1</sup>. A select committee invites the submission of such evidence as it may require<sup>2</sup>. Its proceedings are usually in public, but it is always within a committee's power to exclude strangers. Any lord, even if not a member of the committee, may attend and speak at its meetings, but may not attend any meeting while the committee deliberates (unless invited by the committee to do so), and may not vote<sup>3</sup>. The chairman puts the question on any motion which is submitted for the decision of the committee. He has a vote, but not a casting vote. In the event of an equality of votes, the question is resolved in the negative<sup>4</sup>.

1 As to a quorum of the House see PARA 863.

- 2 HL Standing Orders (Public Business) (2007) no 67. It may not hear parties by counsel unless so authorised by order of the House: no 67.
- 3 HL Standing Orders (Public Business) (2007) no 66.
- 4 See HL Standing Orders (Public Business) (2007) no 57(3); and PARA 866.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/2. The House of Lords/(3) Committees of the House of Lords/(ii) Select Committees/878. Report.

### **878. Report.**

When the inquiry is concluded, the chairman of a select committee of the House of Lords generally draws up a draft report for the consideration of the committee. However, it is open to any member of the committee to submit a draft report to the committee. If there is more than one draft report, the committee must decide, if necessary by a division, which report should be considered as the basis of its own report to the House. Every draft report is entered in the minutes of proceedings of the committee. A member of a select committee who disagrees with the report of the committee may not present a minority report to the House, but he may signify his disagreement to any paragraph in the report, or to the entire report, either by dividing the committee against the proposals to which he objects, or by moving amendments to them whilst they are under the consideration of the committee. The proceedings of select and joint committees are printed and published with their reports<sup>1</sup>. When a report has been agreed upon by a committee, it is laid upon the table of the House and ordered to be printed; and notice must be given of the day upon which it is proposed to debate the report in the chamber<sup>2</sup>.

- 1 Proceedings of sessional select committees are not normally published, unless a division has taken place.
- 2 See HL Standing Orders (Public Business) (2007) no 69.

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### **(iii) Joint Committees**

#### **879. Functions of joint committees.**

A joint committee<sup>1</sup> may be appointed, with the concurrence of both Houses of Parliament, either to consider a bill or draft bill<sup>2</sup>, or a group of bills<sup>3</sup>, or to inquire into some particular subject and to report upon it to the respective Houses<sup>4</sup>. In addition, a joint committee is appointed each session to consider statutory instruments<sup>5</sup>.

- 1 I.e. a committee composed of members of both Houses of Parliament: see PARA 880.
- 2 Eg the Joint Committee on the Draft Constitutional Renewal Bill, HL 166, 2007-2008.
- 3 Eg the Joint Committee on Consolidation etc Bills: see **Parliament** vol 34 (Reissue) PARA 844.
- 4 As to the method of appointment and procedure of joint committees set up under the provisions of the Statutory Orders (Special Procedure) Act 1945 ss 4, 5 see HL Standing Orders (Private Business) (2005) no 209; and **Parliament** vol 34 (Reissue) PARAS 922-923. As to the method of appointment and procedure of joint

committees see HL Standing Orders (Private Business) (2005) no 191; and **PARLIAMENT** vol 34 (Reissue) PARA 938.

5 See **PARLIAMENT** vol 34 (Reissue) PARA 946.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iii) Joint Committees/880. Appointment.

### **880. Appointment.**

A motion to the effect that it is desirable to appoint a joint committee may be made in either House of Parliament, and, when it has been agreed to, a message is sent to the other House to inform it of the resolution and to request its concurrence. The consent of the other House to the desirability of the appointment of the joint committee is signified by means of another message. When this message has been received by the House in which the proposal originated, a motion is made for the appointment of a select committee and for the nomination of the members to serve on it. A message is then sent to the other House to acquaint it with the appointment of the committee and with the number of members appointed to serve on it, and to request it to appoint a similar committee. As soon as this request has been complied with, the time and place of meeting of the committee is fixed by agreement between the two Houses<sup>1</sup>. In whichever House the proposal for the appointment of the committee may have originated, it is customary for the House of Lords to take the initiative in this matter and to send a message to the House of Commons proposing a time and place for the meeting.

<sup>1</sup> As to the appointment of joint committees see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 839. As to communications between the Houses of Parliament generally see PARAS 818-820.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iii) Joint Committees/881. Procedure.

### **881. Procedure.**

The procedure in a joint committee is governed by the practice of the House of Lords, and is the same as that in a select committee of that House<sup>1</sup>. The chairman, therefore, has no casting vote, and whenever there is an equality of votes the question is resolved in the negative<sup>2</sup>. When its inquiry is concluded, the report of the committee is presented to both Houses<sup>3</sup>.

<sup>1</sup> As to procedure in joint committees see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 841-842.

<sup>2</sup> See PARA 877.

<sup>3</sup> Any of the powers which are given to other select committees (see PARA 876; and **PARLIAMENT** vol 34 (Reissue) PARAS 809-812) may be given to a select committee appointed to join with a committee of the other House. Generally, the powers conferred by each House are similar. Papers and reports of former committees may be referred to it by either House.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iv) Sessional Committees/882. Scope of committees.

## **(iv) Sessional Committees**

### **882. Scope of committees.**

The following committees of the House of Lords are appointed at the beginning of each session: (1) the Constitution Committee<sup>1</sup>; (2) the Delegated Powers and Regulatory Reform Committee<sup>2</sup>; (3) the Economic Affairs Committee<sup>3</sup>; (4) the European Union Committee<sup>4</sup>; (5) the Hybrid Instruments Committee<sup>5</sup>; (6) the Merits of Statutory Instruments Committee<sup>6</sup>; (7) the Committee for Privileges<sup>7</sup>; (8) the Science and Technology Committee<sup>8</sup>; and (9) certain committees relating to the domestic or procedural affairs of the House including: (a) the Liaison Committee<sup>9</sup>; (b) the Committee of Selection<sup>10</sup>; (c) the Procedure Committee<sup>11</sup>; and (d) the House Committee<sup>12</sup>. In addition, the following joint committees are appointed at the beginning of each session: (i) the Joint Committee on Consolidation etc Bills<sup>13</sup>; (ii) the Joint Committee on Human Rights<sup>14</sup>; and (iii) the Joint Committee on Statutory Instruments<sup>15</sup>.

1 See PARA 883.

2 See **PARLIAMENT** vol 34 (Reissue) PARAS 739, 947.

3 See PARA 884.

4 See PARA 888.

5 See **PARLIAMENT** vol 34 (Reissue) PARA 946.

6 See PARA 885.

7 See PARA 886.

8 See PARA 887.

9 See PARA 889.

10 See PARA 889.

11 See PARA 889.

12 See PARA 889.

13 See **PARLIAMENT** vol 34 (Reissue) PARA 844.

14 See PARA 989.

15 See **PARLIAMENT** vol 34 (Reissue) PARA 946. The orders of appointment of the committees mentioned in this paragraph and their sub-committees remain in force and effect, notwithstanding the prorogation of Parliament, until such time as the House or committee makes further orders of appointment in the next succeeding session: see HL Standing Orders (Public Business) (2007) no 65. As to the prorogation of Parliament see PARA 1018 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iv) Sessional Committees/883. Constitution Committee.

### **883. Constitution Committee.**

The Constitution Committee's<sup>1</sup> terms of reference are 'to examine the constitutional implications of all Public Bills coming before the House, and to keep under review the operation of the constitution'<sup>2</sup>. To these ends, the Committee assesses the impact of a public bill and, where appropriate, publishes a report on that bill to inform the House. It undertakes investigative inquiries into wider constitutional issues and publishes a report with recommendations aimed principally at the government. The Committee also takes evidence annually from the Secretary of State for Justice, Lord Chancellor and the Lord Chief Justice of England and Wales to clarify the government's position on a range of constitutional issues<sup>3</sup>.

1 The committee was first established by the House in 2001 in response to a recommendation in the Royal Commission Report *A House for the Future* (2000, Cm 4534).

2 See the *First Report of the Select Committee on the Constitution* (HL Paper 11 (2000-01)) para 1.

3 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) p 733.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iv) Sessional Committees/884. Economic Affairs Committee.

#### **884. Economic Affairs Committee.**

The Economic Affairs Committee's remit is to consider economic affairs<sup>1</sup>. It examines the operation of the Monetary Policy Committee of the Bank of England as well as other macro-economic issues and more specific economic topics. The Committee's main function is to examine matters within its remit with which Parliament ought to be concerned, and to report to the House of Lords with recommendations for government action. Each inquiry leads to a report, published together with the evidence on which it is based, setting out the Committee's findings and making recommendations to the government and others<sup>2</sup>.

1 The committee was appointed by the House in 2001 as a sessional committee to replace the earlier ad hoc Select Committee on the Bank of England Monetary Policy Committee: see 234 Lords Journal 192.

2 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) p 735.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iv) Sessional Committees/885. Merits of Statutory Instruments Committee.

#### **885. Merits of Statutory Instruments Committee.**

Established in 2003 the Merits of Statutory Instruments Committee considers, with certain specified exceptions, the merits of any statutory instruments laid before both Houses of Parliament and reports to the House if an instrument merits special attention on certain policy grounds<sup>1</sup>.

1 As to the orders of reference and the motion of appointment see 655 HL Official Report (5th series), 17 December 2003, col 1156. As to legislative committees generally see **PARLIAMENT** vol 34 (Reissue) PARA 757 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iv) Sessional Committees/886. Committee for Privileges.

### **886. Committee for Privileges.**

The Committee for Privileges considers and reports upon questions relating to the privileges of the House of Lords, the precedence of its members, claims to peerages<sup>1</sup>, and any other matters that may be referred to it by the House<sup>2</sup>. Allegations of a member's failure to register or declare an interest<sup>3</sup> are investigated by a sub-committee of the Committee for Privileges, appointed for the purpose<sup>4</sup>.

1 As to claims to peerages see HL Standing Orders (Public Business) (2007) nos 79-82; **COURTS** vol 10 (Reissue) PARA 358; and **PEERAGES AND DIGNITIES** vol 79 (2008) PARA 841 et seq.

2 As to the appointment of the Committee for Privileges see HL Standing Orders (Public Business) (2007) no 78. The committee historically consists of 16 lords together with any four Lords of Appeal and in any claim of peerage three Lords of Appeal had to be present: no 78. It is assumed that the requirement with regard to Lords of Appeal has altered now that the judicial function of the House of Lords has been replaced by the Supreme Court: see PARA 842; and **COURTS**.

3 As to members' interests see PARAS 1067-1068.

4 As to the Committee's responsibility for investigating failure to abide by the Code of Conduct see PARA 1067.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iv) Sessional Committees/887. Science and Technology Committee.

### **887. Science and Technology Committee.**

The Science and Technology Committee is a sessional select committee appointed to consider any question of public policy relating to science and technology. The Committee has powers (1) to appoint sub-committees; (2) to appoint the chairmen of any sub-committees so appointed; and (3) to co-opt lords to serve on the select committee or on any of its sub-committees<sup>1</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 734. As to select committee procedure see generally PARA 877.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iv) Sessional Committees/888. European Union Committee.

### **888. European Union Committee.**

The European Union Committee<sup>1</sup> is appointed to consider European Union documents<sup>2</sup> and other matters relating to the European Union<sup>3</sup>. The committee has power to appoint sub-

committees and to refer to them any matters within its terms of reference<sup>4</sup>. The chairman of the committee is the Principal Deputy Chairman of Committees<sup>5</sup>.

1 The committee was first appointed in 1974, and was known as the European Communities Committee until 1999: see the House of Lords European Union Committee Briefing (2007) available on the House of Lords website, which was accessible at [www.parliament.uk](http://www.parliament.uk) on the date at which this volume states the law.

2 For these purposes, 'European Union documents' includes the following: (1) any proposal under the Community treaties for legislation by the Council or the Council acting jointly with the European Parliament; (2) any document which is published for submission to the European Council, the Council or the European Central Bank; (3) any proposal for a common strategy, a joint action or a common position under Title V (provisions on a common foreign and security policy) of the Treaty on European Union which is prepared for submission to the Council or to the European Council; (4) any proposal for a common position, framework decision, decision or a convention under Title VI (provisions on police and judicial co-operation in criminal matters) of the Treaty on European Union which is prepared for submission to the Council; (5) any document (not falling within (2), (3) or (4)) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation; (6) any other document relating to European Union matters deposited in the House by a Minister of the Crown: see the European Union Committee Terms of Reference available on the House of Lords website, which was accessible at [www.parliament.uk](http://www.parliament.uk) on the date at which this volume states the law.

3 See the European Union Committee Terms of Reference; and, as to the powers and work of the committee see further Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 734, 945-949.

4 In current practice it has appointed seven sub-committees covering defined policy areas as follows: Sub-committee A Economic and Financial Affairs, Trade and International Relations; Sub-committee B Internal Market; Sub-committee C Foreign Affairs, Defence and Development Policy; Sub-committee D Environment and Agriculture; Sub-committee E Law and Institutions; Sub-committee F Home Affairs; and Sub-committee G Social Policy and Consumer Affairs: see the House of Lords European Union Committee Briefing (2007).

5 As to the Principal Deputy Chairman see PARA 852.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(iv) Sessional Committees/889. Functions of other sessional committees.

### **889. Functions of other sessional committees.**

The Committee of Selection<sup>1</sup> selects and proposes to the House of Lords the names of lords to serve on each select committee of the House of Lords and the Lords members of joint committees, except in the case of any committee which is otherwise provided for by statute or by order of the House<sup>2</sup>. It may propose the name of a lord to be chairman of any select committee of the House<sup>3</sup>. The committee also selects and proposes to the House the panel of lords to act as deputy chairmen of committees for each session<sup>4</sup>.

The Procedure Committee considers any proposals for changes in the procedure of the House which may arise from time to time, and whether the standing orders require to be altered to effect such changes<sup>5</sup>.

The Liaison Committee advises the House on the resources required for select committee work and allocates resources between select committees. It reviews the select committee work of the House, and considers requests for ad hoc committees, and makes reports to the House with recommendations. It aims to ensure effective co-ordination between the two Houses, and considers the availability of lords to serve on committees<sup>6</sup>.

The House Committee is chaired by the Lord Speaker and sets the policy framework for the House of Lords administration. It provides non-executive guidance to the Management Board, which is chaired by the Clerk of the Parliaments. It approves the House's strategic, business

and financial plans; agrees the annual estimates and supplementary estimates; supervises the arrangements relating to members' expenses; and approves the House of Lords Annual Report<sup>7</sup>.

- 1 At the commencement of each session the House of Lords appoints a Committee of Selection consisting of the Chairman of Committees and such other Lords as the House names: HL Standing Orders (Public Business) (2007) no 64(1). As to the Chairman of Committees see PARA 852. See also Erskine May's Parliamentary Practice (23rd Edn, 2004) p 737.
- 2 HL Standing Orders (Public Business) (2007) no 64(2).
- 3 HL Standing Orders (Public Business) (2007) no 64(3). In the absence of such an appointment a committee may appoint its own chairman: no 64(4).
- 4 HL Standing Orders (Public Business) (2007) no 64(5). As to the committee's functions in relation to select committees on opposed private bills see HL Standing Orders (Private Business) (2005) nos 95, 104; and **PARLIAMENT** vol 34 (Reissue) PARA 888.
- 5 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 736.
- 6 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 736.
- 7 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 735-736.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(v) Other Committees/890. Committees on legislation.

## **(v) Other Committees**

### **890. Committees on legislation.**

The committee stage of most bills is transacted in a committee of the whole House. However, other committees may be appointed to consider legislation. Any of the following types of committee may be used: a Grand Committee<sup>1</sup>, a public bill committee<sup>2</sup>, a special public bill committee<sup>3</sup>, a Scottish select committee<sup>4</sup>, a select committee or a joint committee<sup>5</sup>.

- 1 See **PARLIAMENT** vol 34 (Reissue) PARA 764.
- 2 See **PARLIAMENT** vol 34 (Reissue) PARA 765.
- 3 See **PARLIAMENT** vol 34 (Reissue) PARA 766.
- 4 See **PARLIAMENT** vol 34 (Reissue) PARA 767.
- 5 See **PARLIAMENT** vol 34 (Reissue) PARAS 809-812.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/2. THE HOUSE OF LORDS/(3) COMMITTEES OF THE HOUSE OF LORDS/(v) Other Committees/891. Committees to prepare reasons.

### **891. Committees to prepare reasons.**

Whenever the House of Lords is unwilling to agree to an amendment or to amendments which the House of Commons has made to a bill, it appoints a committee to meet forthwith and prepare reasons for such disagreement. The committee reports the reasons to the House and the House agrees to them, after which they are submitted to the Commons by means of a message<sup>1</sup>.

<sup>1</sup> A committee for the same purpose is appointed as occasion arises in the House of Commons: see **PARLIAMENT** vol 34 (Reissue) PARA 828. As to messages see PARA 819.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(1) MEMBERS AND CONSTITUENCIES/892. Representation and elections.

### 3. THE HOUSE OF COMMONS

#### (1) MEMBERS AND CONSTITUENCIES

##### 892. Representation and elections.

Members of the House of Commons are constitutionally regarded as the representatives of their constituents and not their delegates or delegates of the party organisations to which they belong<sup>1</sup>. The freedom of speech, and debates and proceedings in Parliament, may not be impeached or questioned in any court or place outside Parliament<sup>2</sup>. It would be a breach of parliamentary privilege and a contempt of Parliament for any person outside the House of Commons to seek to mandate a member or even to claim the right to do so<sup>3</sup>.

Constituencies for the purpose of parliamentary elections are described in Orders in Council made under the Parliamentary Constituencies Act 1986<sup>4</sup>. Provision exists for the continuous review of the distribution of seats<sup>5</sup> by four permanent boundary commissions<sup>6</sup> and for machinery to give effect to the recommendations of these commissions with or without modifications. A constituency must return a single member<sup>7</sup>. 'Constituency' means an area having separate representation in the House of Commons<sup>8</sup>.

Members of the House of Commons are elected, following a proclamation by the Queen for the summoning of a new Parliament, under a system known as the 'relative majority' or 'first past the post' system<sup>9</sup>. The Crown may not interfere with the election of members of Parliament, which ought to be free<sup>10</sup>.

<sup>1</sup> This theory of representation was given its classical expression by Edmund Burke in the speech to the electors of Bristol, 3 November 1774 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 2 note 3). See also the *Report of the Royal Commission on the Constitution 1969-73* (Cmnd 5460) (1973) (the 'Kilbrandon Report') para 1236; and *Amalgamated Society of Railway Servants v Osborne* [1910] AC 87, HL; *Bromley London Borough Council v GLC* [1983] 1 AC 768, [1982] 1 All ER 129, HL; *Conservative and Unionist Central Office v Burrell (Inspector of Taxes)* [1982] 2 All ER 1, [1982] 1 WLR 522, CA; *R v Waltham Forest London Borough Council, ex p Baxter* [1988] QB 419, [1987] 3 All ER 761, CA. See also *Resolution of the Committee of Privileges and House of Commons* (HC Paper (1946-47) no 118) paras 11-15; 440 HC Official Report (5th series), 15 July 1947, cols 284-365 (the case of W J Brown); *Second Report from the Committee of Privileges: Complaint concerning a Resolution of the Yorkshire Area Council of the National Union of Mineworkers* (HC Paper (1974-75) no 634). This theory of representation was endorsed in the *First Report of the Committee on Standards in Public Life* (Cm 2850-I) (1995) and approved by the House of Commons: see 263 HC Official Report (6th series), 19 July 1995, col 1739; 265 HC Official Report (6th series) 6 November 1995, cols 661, 681. For further discussion see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) ch 2.

<sup>2</sup> Bill of Rights s 1 art IX. See also PARA 1078 et seq. As to the history and citation of the Bill of Rights see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 35.

- 3 As to privilege see PARA 1076 et seq.
- 4 See the Parliamentary Constituencies Act 1986 s 1(1).
- 5 As to the redistribution of seats see PARA 896.
- 6 As to the boundary commissions see PARA 896.
- 7 See the Parliamentary Constituencies Act 1986 s 1(1).
- 8 See the Parliamentary Constituencies Act 1986 s 1(2). For the existing special provision for the City of London see PARA 594.
- 9 See **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 344.
- 10 Bill of Rights s 1 art VIII. See also 3 Edw 1 (Statute of Westminster the First) (1275) c 5, which prohibits the subject from interfering with elections by force of arms, malice or menacing. As to the history and citation of the Bill of Rights see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 35.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(1) MEMBERS AND CONSTITUENCIES/893. County and borough constituencies.

### **893. County and borough constituencies.**

Constituencies are divided into county and borough (or, in Scotland, county and burgh) constituencies<sup>1</sup>. Each constituency returns a single member<sup>2</sup>.

1 Parliamentary Constituencies Act 1986 s 1(1). Under the Representation of the People Act 1948 Sch 1 (as originally enacted) (now repealed), England was allotted 215 county constituencies and 291 borough constituencies, Wales 26 county constituencies and ten borough constituencies, Scotland 39 county constituencies and 32 burgh constituencies and Northern Ireland eight county constituencies and four borough constituencies. As to subsequent redistributions see PARA 896.

2 Parliamentary Constituencies Act 1986 s 1(1). The number of constituencies across the United Kingdom at the General Election of 2005 was 646, of which there were 529 in England, 40 in Wales, 59 in Scotland, and 18 in Northern Ireland.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(1) MEMBERS AND CONSTITUENCIES/894. Retirement from the House of Commons.

### **894. Retirement from the House of Commons.**

A member who has been elected to sit in the House of Commons cannot resign his seat<sup>1</sup>, and can only cease to represent his constituency in Parliament (1) by reason of his death<sup>2</sup>; (2) by being expelled from the House of Commons by an order of the House<sup>3</sup>; (3) by the dissolution of the Parliament to which he has been elected; or (4) by becoming disqualified for membership of the House<sup>4</sup>.

1 See 1 Commons Journals 724. Cf 2 Hatsell's Precedents of Proceedings in the House of Commons (1818 Edn) 78-80.

2 The seat of a member who votes or sits during any debate, after the Speaker has been chosen, without having taken the oath or made the affirmation required by law, is vacated as if he were dead: see the Parliamentary Oaths Act 1866 s 5. See also PARA 1001.

3 As to the powers of the House with regard to the expulsion of members see PARA 1100.

4 See PARAS 895, 897 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(1) MEMBERS AND CONSTITUENCIES/895. The Chiltern Hundreds and the Manor of Northstead.

### **895. The Chiltern Hundreds and the Manor of Northstead.**

If a member wishes to retire from Parliament, or is anxious to vacate the seat for which he has been elected in order to stand for some other constituency or to discover whether he still possesses the confidence of his constituents, the practice of Parliament has been for him to apply to be appointed to some office which will entail a vacation of his seat on technical grounds. The vacation of a seat resulting from the holding of such offices has been acknowledged and preserved in former Acts relating to disqualification<sup>1</sup>. The statutory provision in force at present provides that the office of steward or bailiff of Her Majesty's three Chiltern Hundreds of Stoke, Desborough and Burnham, or of steward of the Manor of Northstead<sup>2</sup>, disqualifies its holder for membership<sup>3</sup>.

A member is appointed to one of these offices by means of a warrant signed by the Chancellor of the Exchequer<sup>4</sup>. As soon as the warrant has been signed, the person who has been appointed to the office ceases to be the member of Parliament for the constituency for which he is sitting at the time<sup>5</sup>.

1 Eg the Re-election of Ministers Act 1919, Schedule (repealed). These offices were treated as technically offices of profit (see PARA 607), although no emoluments were in fact received. Until the passing of the House of Commons Disqualification Act 1957 (repealed) they remained the last surviving 'old' offices, appointment to which entailed a vacation of seat without prejudice to re-election. As to the history of offices retained for the purpose of retirement see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 57-58.

2 Other similar offices formerly existed, but the titles to them have since passed from the Crown.

3 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 4, which provides that the offices in question are to be treated as included among the offices described in s 1(1)(f), Sch 1 Pt III (as so reprinted): see PARA 908. The former status of the offices in question in involving vacation of seat without prejudice to re-election (see note 1) has been abolished and their holding operates as an absolute disqualification as long as the offices are held. Before 1957 it was the practice that the person holding one of these offices should hold it until another member who wished to retire was appointed as successor, and since they were 'old' offices, their holding was no bar to re-election if a retiring member wished to stand again. If a member now wishes to stand again, he must be released from office before the election. The practice is to appoint to the offices alternately.

4 It is the Chancellor's duty to grant any application for either office, unless there is some lawful reason to the contrary: see the statement of Sir William Harcourt as Chancellor of the Exchequer (8 Official Report (4th series), 31 January 1893, col 50). It is possible for a member who has not taken the oath to apply for the Chiltern Hundreds: see *Bradlaugh's Case* (1884) 139 Commons Journals 46. All appointments are published in the London Gazette and the warrants of appointment are registered at the Treasury.

5 These offices can be granted during a recess: see 1 Official Report (4th series) col 462. As to the issue of writs to fill the vacancy in these circumstances see PARAS 1094, 1095 note 3.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(1) MEMBERS AND CONSTITUENCIES/896. The redistribution of seats.

### **896. The redistribution of seats.**

For the purpose of the continuous review of the distribution of seats at parliamentary elections, there are separate permanent boundary commissions for England, Scotland, Wales and Northern Ireland, respectively<sup>1</sup>. Each boundary commission must keep under review the representation in the House of Commons of the part of the United Kingdom with which it is concerned and submit periodical reports with respect to the whole of that area to the Secretary of State<sup>2</sup>. The recommendations contained in a report of a boundary commission are given effect by Order in Council made by the Secretary of State<sup>3</sup>.

1 See the Parliamentary Constituencies Act 1986 s 2(1); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 reissue) PARA 67. Provision is also made for the constitution and procedure of the boundary commissions: see s 2(2), Sch 1; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 reissue) PARAS 68-69. For the history of previous legislation relating to redistribution see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 35 et seq; and Blackburn, *The Electoral System in Britain* (1995) ch 4. In 2000 it was decided to transfer responsibility for boundary reviews to the Electoral Commission (see the Political Parties, Elections and Referendums Act 2000 ss 14-20, Sch 3; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 reissue) PARAS 60-66) but the new arrangement was rescinded before taking effect following a recommendation of the Committee on Standards in Public Life: see the 11th Report of the Committee on Standards in Public Life: *Review of the Electoral Commission* (2007, Cm 7006).

2 See the Parliamentary Constituencies Act 1986 ss 3, 5, Sch 2; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 reissue) PARAS 77-83. The first report of a boundary commission with regard to its area as a whole was submitted in November 1954: see the *First Periodical Reports of the Boundary Commissions* presented in November 1954 (Cmd 9311) (England); (Cmd 9313) (Wales); (Cmd 9312) (Scotland); (Cmd 9314) (Northern Ireland); submitted under the House of Commons (Redistribution of Seats) Act 1949 s 2(2)(a) (repealed).

3 See the Parliamentary Constituencies Act 1986 s 4; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 reissue) PARA 77. For examples of Orders in Council made under the Parliamentary Constituencies Act 1986 s 4 see the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006, SI 2006/1041 (amended by SI 2008/1791); and the Parliamentary Constituencies (England) Order 2007, SI 2007/1681 (amended by SI 2009/698).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(2) DISQUALIFICATION OF MEMBERS/(i) Disqualification by Vocation, Status or Incapacity/897. Members of the second chamber.

## **(2) DISQUALIFICATION OF MEMBERS**

### **(i) Disqualification by Vocation, Status or Incapacity**

#### **897. Members of the second chamber.**

Members of the House of Lords<sup>1</sup> are disqualified from membership of the House of Commons. Hereditary peers, who were formerly disqualified by virtue of their status<sup>2</sup>, may now sit in, and vote in elections to, the House of Commons, provided they are not members of the House of Lords<sup>3</sup>.

1 As to the members of the House of Lords see PARA 828 et seq. The Lords Spiritual are disqualified: House of Commons (Removal of Clergy Disqualification) Act 2001 s 1(2). As to the Lords Spiritual see PARA 829 et seq. The earlier statutory prohibitions on episcopally ordained Christian clergy from membership of the House of Commons no longer apply: see the House of Commons (Removal of Clergy Disqualification) Act 2001 s 1(1).

2 *Re Parliamentary Election for Bristol South East* [1964] 2 QB 257, [1961] 3 All ER 354, DC. See also the *Report from the Committee of Privileges* (HC Paper 142 (1960-61)). Formerly, if a member of the House of Commons succeeded to a peerage in virtue of which he acquired a seat in the House of Lords or was created a peer of the United Kingdom, his seat in the House of Commons was vacated and a new writ issued.

3 See the House of Lords Act 1999 s 3(1). The excepted hereditary peers are disqualified: see s 3(2). See also the Holders of Hereditary Peerages (Overseas Electors) (Transitional Provisions) Order 2001, SI 2001/84. As to the excepted hereditary peers see PARA 835 et seq. A hereditary peerage may be disclaimed: see PARA 839.

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### **898. Persons under the age of 18.**

A person is disqualified for membership of the House of Commons if, on the day on which he is nominated as a candidate, he has not attained the age of 18 years<sup>1</sup>. It seems that minors have always been debarred by the law of Parliament from sitting and voting in the House of Commons<sup>2</sup>, but until the reign of William III minority did not become a statutory disability<sup>3</sup>. A person aged 18 years or over may vote at parliamentary elections<sup>4</sup>.

1 Electoral Administration Act 2006 s 17(1). See further **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 231.

2 See 2 Hatsell's Precedents of Proceedings in the House of Commons (1818 Edn) 9-11.

3 See 1 Anson's Law and Custom of the Constitution (5th Edn) pp 80-81.

4 See **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 110.

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### **899. Aliens.**

An alien is disqualified for sitting in Parliament both by common law and by statute<sup>1</sup>. Citizens of the Republic of Ireland and Commonwealth citizens are in general excepted from this disqualification<sup>2</sup>.

1 See the Act of Settlement (1700 or 1701) s 3, excluded in relation to Commonwealth citizens and citizens of the Republic of Ireland by the British Nationality Act 1981 s 52(6), Sch 7; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 11-13. As to the acquisition by aliens and Commonwealth citizens of British citizenship by naturalisation see PARA 840 note 2; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 37. As to the citation of the Act of Settlement see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 35. A citizen of the European Union who is resident in the United Kingdom is not disqualified for membership of the National Assembly for Wales (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 42A et seq) merely because of the Act of Settlement s 3: Government of Wales Act 2006 s 17(2). See further **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 231.

2 See note 1.

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### **900. Mental disorder.**

Mental disorder is a disqualification at common law for sitting and voting in the House of Commons<sup>1</sup>. If, after his election to the House, a member is authorised to be detained on the ground, however formulated, that he is suffering from mental disorder<sup>2</sup>, it is the duty of the court, authority or person on whose order or application, and of any registered medical practitioner upon whose recommendation or certificate, the detention was authorised, and of the person in charge of the hospital or other place in which the member is authorised to be detained, to notify the Speaker of the House of Commons that the detention has been authorised<sup>3</sup>. Any two members of the House may also certify to the Speaker that they are credibly informed of such detention<sup>4</sup>. The case is then dealt with under special statutory provisions<sup>5</sup>.

1 D'Ewes Journals of all Parliaments in the reign of Queen Elizabeth (1682 Edn) 126. For the general law relating to mentally disordered persons see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 401 et seq.

2 As to the meaning of 'mental disorder' see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402.

3 See the Mental Health Act 1983 s 141(1) (amended by the Mental Health Act 2007 s 1(4), Sch 1, Pt 1, paras 1, 16(1), (2)). As to the Speaker see PARAS 931-936.

4 See the Mental Health Act 1983 s 141(2); and PARA 1094.

5 For the procedure adopted in such cases see PARA 1094.

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### **901. Corrupt electoral practices.**

Persons who have been found guilty of corrupt or illegal practices at parliamentary elections are disqualified for varying periods according to the nature of the offence either for the constituency for which the election was held or for any constituency<sup>1</sup>.

1 See **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 670 et seq. See also Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 52-53. As to the disqualification for sitting and voting which arises and the penalties which are imposed if the return and declarations as to election expenses are not transmitted before the expiration of the time limit for the purpose see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 578.

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### **902. Other crimes.**

Persons who have been convicted of treason cannot be elected or sit or vote until they have suffered the allotted or any substituted punishment or have been pardoned<sup>1</sup>.

A person found guilty of one or more offences, whether in the United Kingdom<sup>2</sup> or elsewhere, and sentenced or ordered to be imprisoned or detained indefinitely for more than one year is disqualified for membership of the House of Commons while detained anywhere in the British Islands<sup>3</sup> or the Republic of Ireland in pursuance of the sentence or order or while unlawfully at large at a time when he would otherwise be detained<sup>4</sup>. The election or nomination of such a person is void<sup>5</sup> and the seat of a member so disqualified must be vacated<sup>6</sup>.

The course to be followed if a member is convicted of an offence which attracts a lesser penalty is a matter for the House, which might decide to expel him. However, expulsion does not in itself create a disability, nor prevent a constituency from re-electing the expelled member<sup>7</sup>.

1 See the Forfeiture Act 1870 s 2; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1818. For a case of a member who became disqualified on these grounds after election see *Lynch's Case* (1903) 158 Commons Journals 40.

2 As to the meaning of 'United Kingdom' see PARA 801 note 1.

3 The 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978 s 5, Sch 1. There is no statutory definition of the 'Channel Islands' but they consist of the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies.

4 See the Representation of the People Act 1981 s 1.

5 See the Representation of the People Act 1981 s 2(1).

6 See the Representation of the People Act 1981 s 2(2).

7 See also Erskine May's Parliamentary Practice (23rd Edn, 2004) p 52.

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### **903. Bankrupts: England and Wales.**

A person in respect of whom a bankruptcy restrictions order<sup>1</sup> or a debt relief restrictions order<sup>2</sup> has effect is disqualified from membership of the House of Commons, and from sitting on a joint committee of both Houses<sup>3</sup>. If a member of the House of Commons becomes so disqualified, his seat is vacated<sup>4</sup>. If a person who is so disqualified is returned as a member of the House of Commons, his return is void<sup>5</sup>. If a court makes a bankruptcy restrictions order or interim order, or a debt relief restrictions order or an interim debt relief restrictions order, in respect of a member of the House of Commons it must notify the Speaker<sup>6</sup>, and if the Secretary of State accepts a bankruptcy restrictions undertaking<sup>7</sup> or a debt relief restrictions undertaking made by a member of the House of Commons, he must notify the Speaker<sup>8</sup>.

An enactment about insolvency applies to a member irrespective of any parliamentary privilege<sup>9</sup>.

1 As to bankruptcy restrictions orders see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

2 As to debt relief restrictions orders see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

3 See the Insolvency Act 1986 s 426A(1)(a), (c) (added by the Enterprise Act 2002 s 266(1); and amended by the Tribunals, Courts and Enforcement Act 2007 s 108(3), Sch 20 Pt 1 paras 1, 12(1), (2)). See also **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**. As to disqualifications in the House of Lords see PARA 840.

4 See the Insolvency Act 1986 s 426A(2) (as added: see note 3).

5 See the Insolvency Act 1986 s 426A(3) (as added: see note 3).

6 See the Insolvency Act 1986 s 426A(5) (as added (see note 3); and amended by the Tribunals, Courts and Enforcement Act 2007 s 108(3), Sch 20 Pt 1 paras 1, 12(1), (3)). As to the Speaker of the House of Commons see PARAS 931-936.

7 As to bankruptcy restrictions undertakings see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

8 See the Insolvency Act 1986 s 426A(6) (as added (see note 3); and amended by the Tribunals, Courts and Enforcement Act 2007 s 108(3), Sch 20 Pt 1 paras 1, 12(1), (4)).

9 See the Insolvency Act 1986 s 426C(1) (added by the Enterprise Act 2002 s 266(1)).

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#### **904. Bankrupts: Scotland and Northern Ireland.**

An individual against whom a sequestration of estate order is made in Scotland, or who is adjudged bankrupt in Northern Ireland, is disqualified from being elected a member of the House of Commons, or from sitting or voting in the House of Commons or any of its committees, until annulment or discharge<sup>1</sup>.

A court which makes the order must notify the Speaker<sup>2</sup>, and also, immediately after it becomes apparent which of the following certificates is applicable, must further certify to the Speaker either that the period of six months beginning with the day of the adjudication has expired without the adjudication having been annulled, or that the adjudication has been annulled before the end of that period<sup>3</sup>.

Where a member of the House of Commons who is so disqualified continues to be disqualified until the end of the period of six months beginning with the day of the bankruptcy restriction order, his seat must be vacated at the end of that period<sup>4</sup>.

1 See the Insolvency Act 1986 s 427(1), (2) (s 427(1) amended by the Enterprise Act 2002, ss 266(2)(a), 278(2), Sch 26). See also **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

2 See the Insolvency Act 1986 s 427(5). As to the Speaker of the House of Commons see PARAS 931-936.

3 See the Insolvency Act 1986 s 427(6).

4 See the Insolvency Act 1986 s 427(4).

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#### **(ii) Disqualification by Office or Service**

#### **905. The House of Commons Disqualification Act 1975.**

Disqualification by office or service is governed entirely by the House of Commons Disqualification Act 1975, a re-enactment (with subsequent amendments) of the House of Commons Disqualification Act 1957, whose provisions replaced and repealed the previous indeterminate test of the holding of an office of profit under or from the Crown<sup>1</sup>. The 1957 Act also codified for the first time the large number of statutory provisions which attached disqualification to particular offices, and repealed the former enactments<sup>2</sup>.

Disqualification arises by reference to employment in named branches of the public service or the holding of particular non-ministerial offices<sup>3</sup>. Ministerial office is dealt with separately<sup>4</sup>.

Except as provided by the House of Commons Disqualification Act 1975, no person is disqualified for membership of the House of Commons by reason of holding an office or place of profit under the Crown, or any other office or place; and a person is not disqualified for appointment to, or for holding, any office or place by reason of his being a member of the House<sup>5</sup>.

The Act does not affect disqualification arising from vocation, status or incapacity<sup>6</sup>.

1    le the test imposed by the Succession to the Crown Act 1707 ss 24, 25 (repealed). See generally Erskine May's Parliamentary Practice (23rd Edn, 2004), Ch 3; and Blackburn, *The Electoral System in Britain* (1995) p 157 et seq.

2    See the House of Commons Disqualification Act 1957 s 14(1), Sch 4 (repealed). One hundred and twenty Acts were repealed either in whole or in part by Sch 4 Pt I. The previous disqualification of Crown pensioners and Crown contractors was repealed without re-enactment: see ss 9, 14(1), Sch 4 (repealed).

3    See PARAS 906-908.

4    See PARA 909.

5    House of Commons Disqualification Act 1975 (Reprint No 15) s 1(4).

6    See PARA 897 et seq.

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## **906. Civil Service, armed forces and police.**

Any person who is employed in the Civil Service of the Crown<sup>1</sup>, whether in an established capacity or not, is disqualified for membership of the House of Commons, and it is immaterial whether he is so employed for the whole or part of his time<sup>2</sup>.

Members of the regular armed forces of the Crown<sup>3</sup>, but officers on retired or emergency lists and those holding emergency commissions or belonging to any reserve of officers are not disqualified<sup>4</sup>. Naval, army, marine and air force pensioners and former soldiers recalled for service are exempted from disqualification<sup>5</sup>, as are also Admirals of the Fleet, Field Marshals and Marshals of the Royal Air Force unless they hold an appointment for the time being in the naval, military or air force service of the Crown<sup>6</sup>.

Persons employed as full-time constables in any police force maintained by a police authority<sup>7</sup> are disqualified for membership of the House of Commons<sup>8</sup>.

1 'Civil Service of the Crown' includes the Civil Service of Northern Ireland, the Northern Ireland court service, the diplomatic service and the overseas Civil Service: House of Commons Disqualification Act 1975 (Reprint No 15) s 1(3).

2 House of Commons Disqualification Act 1975 (Reprint No 15) s 1(1)(b). However, members of the Royal Observer Corps are exempted from disqualification unless employed on a whole-time basis: see s 3(3).

3 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 1(1)(c) (amended by the Armed Forces Act 2006 s 378, Sch 16 para 67(a), Sch 17).

'Regular armed forces of the Crown' means the Royal Navy, the Royal Marines, the regular army (as defined by the Armed Forces Act 2006 s 234 (see **ARMED FORCES**)), or the Royal Air Force: House of Commons Disqualification Act 1975 (Reprint No 15) s 1(3) (amended by the Armed Forces Act 2001 s 34, Sch 6, Pt 5 para 26; and the Armed Forces Act 2006 s 378, Sch 16 para 67(b)).

Members of the armed forces of the Crown on the active list in normal times are prohibited from announcing themselves as candidates at a parliamentary election, as are civil servants, members of the Ulster Defence Regiment, and members of the Territorial Army or of the Royal Auxiliary Air Force when serving on the permanent staff: see the Servants of the Crown (Parliamentary, European Parliament and Northern Ireland Assembly Candidature) Order 1987, dated 18 March 1987 (amended by virtue of the European Communities (Amendment) Act 1986 s 3). This order is not printed as a statutory instrument but copies are available from the Privy Council office. All applications for release from the armed forces to contest a parliamentary election are examined by an advisory committee appointed by the Home Secretary.

4 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 3(1)(a).

5 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 3(1)(b) (amended by the Reserve Forces Act 1996 s 131(1), Sch 10 para 15).

6 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 3(2).

7 'Police authority' means any police authority within the meaning of the Police Act 1996 (see s 101(1); and **POLICE** vol 36(1) (2007 Reissue) PARA 139) or the Police (Scotland) Act 1967, or the Northern Ireland Policing Board: House of Commons Disqualification Act 1975 (Reprint No 15) s 1(3) (amended by the Police (Northern Ireland) Act 2000 s 78(1), Sch 6 para 3(1), (2)).

8 House of Commons Disqualification Act 1975 (Reprint No 15) s 1(1)(d), (3). The definition entails the disqualification of members of all public forces (ie the Metropolitan Police, the City of London police and county police forces), and the reference to the Northern Ireland Policing Board disqualifies members of the Police Service of Northern Ireland. See further **POLICE**. 'Member' in relation to a police force means a full-time constable (s 1(3)), so members of private police forces and special constables are not included in the disqualification.

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## **907. Legislatures outside the Commonwealth.**

Members of the legislatures of any country or territory outside the Commonwealth, with the exception of Ireland, are disqualified from membership of the House of Commons<sup>1</sup>.

Members of such legislatures are in any case disqualified as aliens unless exceptionally they have dual nationality<sup>2</sup>.

1 House of Commons Disqualification Act 1975 (Reprint No 15) s 1(1)(e) (amended by the Disqualifications Act 2000 s 1).

2 See PARA 899.

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### 908. Named offices.

There are a large number of public offices whose holders are disqualified from membership of the House of Commons, as follows:

- 27 (1) holders of specified judicial offices are disqualified, including, inter alia, judges of the Supreme Court, the judges in the High Court, Court of Appeal and Court of Session, District Judges (but not ordinary Justices of the Peace), and some commissioners exercising judicial functions (such as those dealing with tax and social security)<sup>1</sup>;
- 28 (2) bodies all of whose members are disqualified, including commissions, boards, tribunals and public authorities exercising executive, regulatory or quasi-judicial functions<sup>2</sup>;
- 29 (3) residual public bodies, whose holders Parliament has considered inappropriate for membership of the House of Commons, extending to membership or chairs of numerous councils, boards, committees, and officers<sup>3</sup>;
- 30 (4) holders for the time being of any of certain further offices, covering lord lieutenants and sheriffs of geographical areas, are subject to a limited disqualification in respect of relevant constituencies only<sup>4</sup>.

The offices in question<sup>5</sup> are subject to alteration by the addition or omission of offices or the removal of an office from one category to another or by the alteration of the description of any office by Order in Council made in pursuance of a resolution of the House of Commons<sup>6</sup>.

Acts creating new offices or official bodies commonly provide for the insertion of these offices or bodies in the relevant Part of Schedule 1 to the House of Commons Disqualification Act 1975<sup>7</sup>. A copy of the 1975 Act, as from time to time amended by Order in Council or by any other enactment, must be prepared and certified by the Clerk of the Parliaments and deposited with the rolls of Parliament; and all copies of the 1975 Act thereafter printed by the Queen's printer<sup>8</sup> must be printed in accordance with the certified copy<sup>9</sup>. Shortly before the expected dissolution of Parliament the House of Commons commonly agrees a resolution prior to the making of an Order in Council amending the 1975 Act<sup>10</sup>.

No member of the House of Commons is required to accept any office or place by virtue of which he would be disqualified for membership of the House or the constituency for which he is sitting<sup>11</sup>.

1 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 1(1)(a), Sch 1 Pt I.

2 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 1(1)(f), Sch 1 Pt II. See also Blackburn, *The Electoral System in Britain* (1995) p 170 et seq.

3 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 1(1)(f), Sch 1 Pt III. As to the offices of Steward or Bailiff of the Chiltern Hundreds or Manor of Northstead see PARA 895.

4 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 1(2), Sch 1 Pt IV. The offices and constituencies are (1) a member of Her Majesty's Commission of Lieutenancy for the City of London, in relation to the constituency comprising the whole of the city of London; (2) Her Majesty's Lord-Lieutenant or Lieutenant for Greater London, in relation to any constituency comprising any part of Greater London; (3) Her Majesty's Lord-Lieutenant or Lieutenant for a county in England and Wales, in relation to any constituency comprising the whole or part of the area for which he is appointed; (4) Her Majesty's Lord-Lieutenant or Lieutenant for an area in Scotland, in relation to any constituency comprising the whole or part of the area in which the Lord-Lieutenant holds office or in which the Lord-Lieutenant or Lieutenant discharges his functions; (5) Her Majesty's

Lord-Lieutenant or Lieutenant for the city of Aberdeen, Dundee, Edinburgh or Glasgow, in relation to any constituency comprising the whole or part of the city in which the Lord-Lieutenant holds office or for which the Lieutenant is appointed; (6) Her Majesty's Lord-Lieutenant or Lieutenant for a county or county borough in Northern Ireland, in relation to any constituency comprising the whole or part of the area for which he is appointed; (7) Governor of the Isle of Wight, in relation to that Isle; (8) the High Sheriff of Greater London, in relation to any constituency comprising any part of Greater London; and (9) the High Sheriff of a county in England and Wales, in relation to any constituency comprising the whole or part of the area for which he is appointed: Sch 1, Pt IV.

5 le under the House of Commons Disqualification Act 1975 (Reprint No 15) Sch 1.

6 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 5(1).

7 See eg the Environment Act 1995 s 120(1), Sch 22 para 31; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 (the Environment Agency).

8 As to the Queen's printer see **STATUTES** vol 44(1) (Reissue) PARA 1249.

9 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 5(2).

10 The last such resolution was agreed to by the House on 13 February 1997. An Order in Council was made on 19 March 1997 (see the House of Commons Disqualification Order 1997, SI 1997/861); and immediately thereafter Reprint No 15 of the House of Commons Disqualification Act 1975 set out the current state of the legislation in time for the general election of May 1997.

11 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 8(1). Section 8(1) does not affect any obligation to serve in the armed forces of the Crown whether imposed by enactment or otherwise: see s 8(2). Corresponding provisions apply to persons nominated as candidates for election: see s 8(1).

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### 909. Ministerial offices.

Not more than 95 holders of certain ministerial offices<sup>1</sup> are entitled to sit and vote in the House of Commons at any one time<sup>2</sup>. The schedule of offices<sup>3</sup> may be amended by Orders in Council made in consequence of a transfer of ministerial functions or the dissolution of a department<sup>4</sup>, but the aggregate number of ministerial offices may not be increased by the Order<sup>5</sup>. Ministers are not disqualified by reason of any office held ex officio as the holder of the ministerial office concerned<sup>6</sup>.

If at any time the number of persons holding ministerial offices<sup>7</sup> in the House of Commons exceeds the number authorised, only persons who were both members of the House and holders of such offices before the excess occurred may sit and vote until the number has been reduced by death or resignation or otherwise to the maximum permitted number<sup>8</sup>.

1 le the offices specified in the House of Commons Disqualification Act 1975 (Reprint No 15) s 2, Sch 2 (amended by the Scotland Act 1998 ss 48(6), 87(1), 125, Sch 9; and SI 2002/794). The specified offices are: (1) Prime Minister and First Lord of the Treasury; (2) Lord President of the Council; (3) Lord Privy Seal; (4) Chancellor of the Duchy of Lancaster; (5) Paymaster General; (6) Secretary of State; (7) Chancellor of the Exchequer; (8) President of the Board of Trade; (9) Minister of State; (10) Chief Secretary to the Treasury; (11) minister in charge of a public department of Her Majesty's United Kingdom government (if not within the other provisions of Sch 2 (as so reprinted)); (12) Attorney General; (13) Solicitor General; (14) Advocate General for Scotland; (15) Parliamentary Secretary to the Treasury; (16) Financial Secretary to the Treasury; (17) Parliamentary Secretary in a government department other than the Treasury, or not in a department; (18) Junior Lord of the Treasury; (19) Treasurer of Her Majesty's Household; (20) Comptroller of Her Majesty's Household; (21) Vice-chamberlain of Her Majesty's Household; and (22) Assistant Government Whip: Sch 2 (as so amended). For these purposes, 'Minister of State' means a member of Her Majesty's United Kingdom government who neither has charge of any public department nor holds any other of the offices specified in Sch

2 or any office in respect of which a salary is payable out of money provided by Parliament under the Ministerial and other Salaries Act 1975 s 3(1)(b); and 'Parliamentary Secretary' includes a person holding ministerial office (however called) as assistant to a member of Her Majesty's United Kingdom government, but not having departmental responsibilities: House of Commons Disqualification Act 1975 (Reprint No 15) s 9. As to ministerial offices see further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 394 et seq.

2 House of Commons Disqualification Act 1975 (Reprint No 15) s 2(1).

3 Ie those contained in the House of Commons Disqualification Act 1975 (Reprint No 15) Sch 2: see note 1.

4 Ministers of the Crown Act 1975 s 1(2)(d). As to the redistribution of functions of ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363.

5 See the Ministers of the Crown Act 1975 s 1(3). No modification may be made so as to increase the amount of any salary which may be paid: see s 1(3).

6 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 2(3).

7 Ie offices specified in the House of Commons Disqualification Act 1975 (Reprint No 15) Sch 2: see note 1.

8 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 2(2).

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### **910. Effects of disqualification and provision for relief.**

If a person disqualified by reason of office or service<sup>1</sup> for membership of the House of Commons, or for membership for a particular constituency, is elected as a member, his election is void<sup>2</sup>; and if a member of the House of Commons thus becomes disqualified either for membership of the House or for membership for the constituency for which he sits, his seat must be vacated<sup>3</sup>. However, in either case, the House may direct, by order, that the effects of the disqualification or alleged disqualification are to be disregarded<sup>4</sup>. A member who accepts a disqualifying office is required to give written notice of his acceptance forthwith to the Speaker<sup>5</sup>. Where the Speaker would otherwise be required to issue a warrant for a new writ for an election during a recess<sup>6</sup>, in the room of a member thus becoming disqualified, he may defer the issue of the warrant in order to afford an opportunity to the House to make an order directing that the effects of the disqualification or alleged disqualification are to be disregarded<sup>7</sup>.

1 Ie by the House of Commons Disqualification Act 1975 (Reprint No 15) ss 1, 2: see PARAS 906-909.

2 House of Commons Disqualification Act 1975 (Reprint No 15) s 6(1)(a).

3 House of Commons Disqualification Act 1975 (Reprint No 15) s 6(1)(b). As to the avoidance of the election of a disqualified person see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 843. For the position relating to certain criminal offenders see PARA 902.

4 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 6(2). It must appear to the House that the grounds of the disqualification or alleged disqualification have been removed and that it is otherwise proper to make the order before the order may be made: s 6(2). For such an order made under the House of Commons Disqualification Act 1957 (mainly repealed and replaced by the House of Commons Disqualification Act 1975) see 230 Commons Journals 71. The order of the House does not affect the proceedings on any election petition or any determination of an election court, and the duty of the House to make the appropriate orders when informed of a certificate and of any report of an election court under the Representation of the People Act 1983 s 144(7) remains unimpaired: House of Commons Disqualification Act 1975 (Reprint No 15) s 6(3); see also **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 858. The House has no power to make an order in the case of disqualification arising from vocation, status or incapacity, as to which see PARAS 897-

904. The effects of disqualification have also been removed by specific statutory provision: see eg the Niall Macpherson Indemnity Act 1954 (repealed). Acts such as this were passed to remove the consequences of disqualification incurred inadvertently at a time when the law relating to disqualification was in some confusion, and when the House of Commons possessed no such power to afford relief as is now given by the House of Commons Disqualification Act 1975 (Reprint No 15) s 6(2).

5 Recess Elections Act 1975 s 3(1). The notice may be given by signing a certificate of vacancy: s 3(1). As to the Speaker see PARAS 931-936.

6 le by virtue of the Recess Elections Act 1975: see PARA 1095.

7 House of Commons Disqualification Act 1975 (Reprint No 15) s 6(4).

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### **(iii) Determination of Questions**

#### **911. Determination of questions by the House.**

If it is alleged otherwise than by an election petition<sup>1</sup> that any member of Parliament or person elected to be a member is or has become disqualified for membership whether by vocation, status or incapacity<sup>2</sup> or by reason of office or service<sup>3</sup>, his right to sit and vote in the House of Commons may be decided by the House itself. The House does, in fact, take notice of any legal disabilities affecting its members, and issues writs in the room of members adjudged to be incapable of sitting<sup>4</sup>.

1 See PARA 913; and **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 778 et seq.

2 See PARAS 897-904.

3 See PARAS 905-910.

4 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) ch 3. In cases of disqualification arising under the House of Commons Disqualification Act 1975, the House may afford relief from the effects of disqualification: see PARA 910.

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#### **912. Determination of questions by the Privy Council.**

Where it is claimed that a person purporting to be a member of the House of Commons is or has been disqualified at any time since his election by reason of office or service under the House of Commons Disqualification Act 1975<sup>1</sup>, application may be made to Her Majesty in Council for a declaration to that effect<sup>2</sup>, the application being referred to the Judicial Committee of the Privy Council<sup>3</sup>.

A declaration may not be made in respect of an alleged disqualification on grounds which subsisted at the time of the respondent's election if an election petition is pending or has been tried in which the disqualification on those grounds is or was in issue<sup>4</sup>. Nor may a declaration be made in respect of disqualification incurred by the respondent on any grounds if an order has

been made by the House of Commons directing that the effects of disqualification or alleged disqualification on those grounds should be disregarded<sup>5</sup>. Subject to these two provisos, a declaration may be made whether the grounds of the alleged disqualification subsisted at the time of the respondent's election or arose subsequently<sup>6</sup>.

1 See PARAS 905-910. This procedure is not available if the alleged disqualification is on the grounds of vocation, status or incapacity, as to which see PARAS 897-904.

2 House of Commons Disqualification Act 1975 (Reprint No 15) s 7(1).

3 House of Commons Disqualification Act 1975 (Reprint No 15) s 7(2), applying the Judicial Committee Act 1833 s 3. The application must be made in accordance with such rules as may be prescribed: House of Commons Disqualification Act 1975 (Reprint No 15) s 7(1). At the date at which this volume states the law no such rules had been prescribed. The person in respect of whom the application is made is the respondent and the applicant must give such security for costs not exceeding £200 as the Judicial Committee may direct: s 7(3). On the direction of the Judicial Committee, issues of fact may be tried in the High Court if the constituency concerned is in England or Wales, in the Court of Session if the constituency is in Scotland, and in the High Court in Northern Ireland if the constituency is in Northern Ireland; and the decision of the court concerned on the issue of fact is final: s 7(4). For the general procedure before the Judicial Committee see **COURTS** vol 10 (Reissue) PARA 416 et seq.

4 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 7(5)(a).

5 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 7(5)(b). As to the power to make such orders see PARA 910.

6 See the House of Commons Disqualification Act 1975 (Reprint No 15) s 7(5). No limitation of time is laid down for the application to Her Majesty in Council, and it therefore appears that in cases of disqualification under the 1975 Act subsisting at the time of an election, this procedure may be used when proceedings by election petition are impossible owing to the expiry of the time limit for presentation of the petition. As to the time for presentation see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 783.

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### **913. Determination of questions at elections.**

The disqualification of persons elected as members of Parliament on grounds subsisting at the time of election may be determined by an election court on presentation of an election petition<sup>1</sup>. A returning officer may not decide any question which might be raised with respect to the disqualification of a candidate unless a nomination paper is on the face of it a mere abuse of the rules of nomination<sup>2</sup>. Votes given for a candidate who is disqualified may in certain circumstances be regarded as not given at all or thrown away, thus enabling the candidate next on the poll to be elected<sup>3</sup>. For the votes given for a candidate to be thrown away, the voters must before voting either have had or be deemed to have had notice of the facts creating the candidate's disqualification<sup>4</sup>.

1 See **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 778 et seq, where the procedure is described in full.

2 See **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 271.

3 See **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 843.

4 See **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 273, **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 843.

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#### **914. Determination of questions by actions for penalties.**

Numerous Acts formerly afforded an opportunity for courts of law to determine a question of disqualification as a result of actions brought to recover statutory penalties from members of Parliament for sitting or voting while disqualified. With one exception all such actions have now been abolished, mainly as a result of the repeal of the relevant statutory provisions by the House of Commons Disqualification Act 1957<sup>1</sup>. The exception is that a penalty of £100 is imposed for each day on which a candidate successful at an election sits or votes in the House of Commons while disqualified on the grounds of having failed to transmit the return and declarations as to election expenses within the time limited for that purpose<sup>2</sup>.

1 See the House of Commons Disqualification Act 1957 s 14, Sch 4 (repealed).

2 See the Representation of the People Act 1983 s 85(1) (amended by the Representation of the People Act 1985 s 24, Sch 4 para 29(a)); and **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 758. The penalty belongs to the Crown: *Bradlaugh v Clarke* (1883) 8 App Cas 354, HL. Cf also the provisions of the Parliamentary Oaths Act 1866 s 5; and PARA 1001. An offence under the 1866 Act does not technically disqualify the member but vacates his seat as if he were dead.

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### **(3) SALARIES, ALLOWANCES, AND PENSIONS**

#### **(i) Salaries**

#### **915. Members' salaries.**

Members of the House of Commons have received salaries for their parliamentary duties since 1911<sup>1</sup>.

Increases in salary took place by way of ad hoc resolutions of the House of Commons until 1971 when the question of members' pay, allowances and pensions was referred to the Top Salaries Review Body (now the Senior Salaries Review Body) for the purpose of making recommendations from time to time<sup>2</sup>. In 2008 the House of Commons agreed a resolution making the conclusions of the Senior Salaries Review Body automatic, and the linking the calculation of members' salaries to increases in the pay of 15 selected public sector groups<sup>3</sup>.

As from a day to be appointed the Independent Parliamentary Standards Authority ('IPSA')<sup>4</sup> has responsibility for paying the salaries of members in accordance with the relevant resolutions of the House of Commons<sup>5</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 23 et seq. The amount of the original sum paid between 1911 and 1931 was £400 a year. The annual salary for the year commencing 1 April 2009 is £64,766.

2 See *First Report of the Review Body on Top Salaries, Ministers of the Crown and Members of Parliament* (Cmnd 4836) (1971-72).

3 See 478 HC Official Reports (6th Series), 3 July 2008, col 1092. The resolution followed the *Review of Parliamentary Pay and Pension* (Cm 7416) (2008). The resolution was implemented for the year commencing 1 April 2009 by the conclusions of the Review Body on Senior Salaries, *Salary Increase for Members of the House of Commons*, notified to the Speaker on 27 March 2009, setting the annual salary of a member at £64,766. At the date at which this volume states the law a copy of this report was available at [www.ome.uk.com](http://www.ome.uk.com).

4 As to IPSA see PARA 923.

5 Parliamentary Standards Act 2009 s 4(1). This responsibility is subject to anything done in exercise of the disciplinary powers of the House: s 4(2). At the date at which this volume states the law s 4 had not yet come into force on a day to be appointed by order under s 14(3).

## UPDATE

### 915 Members' salaries

TEXT AND NOTES 4, 5--Day appointed is 7 May 2010: SI 2010/1033.

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### 916. Ministerial and other salaries.

Government Ministers, the Speaker of the House of Commons and Deputy Speakers, the Leader of the Opposition, and Opposition Chief and Deputy Chief Whips, are entitled to receive a salary for those positions in addition to their salary as a member of Parliament<sup>1</sup>.

The salaries are reviewed by the Senior Salaries Review Body and updated in similar manner to that for member's salaries<sup>2</sup>. To ensure the independence of the office of Speaker, changes to the salary of Speaker are effected by Order in Council and paid for from the Consolidated Fund<sup>3</sup>.

The chairmen of select committees may also receive a salary in addition to their salary as a member of Parliament, likewise reviewed and updated by the Senior Salaries Review Body<sup>4</sup>.

1 See the Ministerial and Other Salaries Act 1975 s 1, Sch 1; PARA 931; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 423 et seq. Ministers of the Crown have always been paid a salary but the position was not provided for in a systematic way until 1937. Payment of a salary for the Speaker was first authorised in 1790. For the year commencing 1 April 2009, annual salary entitlements included: the Prime Minister £132,923; the Speaker, Lord Chancellor, Cabinet ministers, and Government Chief Whip £79,754; ministers of state £41,370; parliamentary under secretaries £31,401; Leader of the Opposition £73,617; Opposition Chief Whip £41,370. For 2009-10 however ministers agreed not to receive the pay rise in either their ministerial or parliamentary salaries on the basis of the importance of public sector pay restraint at a time of economic uncertainty: 490 HC Official Report (6th series), 31 March 2009, col 62 WS.

2 See PARA 915.

3 See Ministerial and Other Salaries Act 1975, s 1(3); and PARA 931.

4 As to the resolution of the House see 412 HC Official Report (6th series), 30 October 2003, col 448 et seq. The initial annual sum set in 2003 was £12,500, based on a request to the House by the Senior Salaries Review Body: see *Pay for Select Committee Chairmen in the House of Commons* (Cm 5673) (2003). The annual salary payable for 2009-10 is £14,366.

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## (ii) Allowances

### 917. Principles governing members' allowances.

Members of Parliament are provided with financial support in the form of allowances to enable them to work effectively in Parliament and in their constituencies<sup>1</sup>. Parliamentary allowances are designed to ensure that members are reimbursed for costs properly incurred in the performance of their duties<sup>2</sup>.

Guidance on how and when allowances may be claimed by members is contained in *The Green Book*<sup>3</sup>. The principles governing allowances are as follows:

- 31 (1) claims should be above reproach and must reflect actual usage of the resources being claimed;
- 32 (2) claims must only be made for expenditure that it was necessary for a member to incur to ensure that he or she could properly perform his or her parliamentary duties;
- 33 (3) allowances are reimbursed only for the purpose of a member carrying out his or her parliamentary duties, and claims cannot relate to party political activity of any sort, nor must any claim provide a benefit to a party political organisation;
- 34 (4) it is not permissible for a member to claim under any parliamentary allowance for anything that the member is claiming from any other source;
- 35 (5) members must ensure that claims do not give rise to, or give the appearance of giving rise to, an improper personal financial benefit to themselves or anyone else;
- 36 (6) members are committed to openness about what expenditure has been incurred and for what purposes;
- 37 (7) individual members take personal responsibility for all expenses incurred, for making claims and for keeping records, even if the administration of claims is delegated to others;
- 38 (8) the requirement of ensuring value for money is central in claiming for accommodation, goods or services, and members should avoid purchases which could be seen as extravagant or luxurious;
- 39 (9) claims must be supported by documentary evidence, except where the House has agreed that such evidence is not necessary<sup>4</sup>.

<sup>1</sup> Allowances provide support for: employing staff (Staffing Expenditure); provision of facilities, equipment and supplies for members and their staff (Administrative and Office Expenditure); overnight stays away from home whilst on parliamentary duties (Personal Additional Accommodation Expenditure); communicating with constituents (Communications Expenditure); House stationery and postage (Stationery and Postage); and travel between Westminster, the constituency and main home (Travel expenditure: see the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 1.1. The Committee on Standards in Public Life has recommended a series of reforms: see the *Twelfth Report of the Committee on Standards in Public Life: MPs' expenses and allowances: supporting Parliament, safeguarding the taxpayer report* (Cm 7724) (2009).

<sup>2</sup> See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 1.1.

<sup>3</sup> See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009). See also HC Standing Orders (Public Business) (2009) nos 152D, 152G; and PARA 989 note 9.

4 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 1.3. These principles are derived from the core principles for standards in public life contained in the Code of Conduct for Members of Parliament: see PARA 1071.

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### **918. Personal Additional Accommodation Expenditure.**

A personal additional accommodation expenditure allowance ('PAAE') is available to reimburse members for the expense of staying overnight away from their main home for the purpose of performing parliamentary duties<sup>1</sup>. It may only be claimed for expenses incurred by way of rent, mortgage interest, council tax, hotel accommodation, utility bills, service charges, buildings and contents insurance, and overnight subsistence<sup>2</sup>.

PAAE can be claimed for overnight stays in London if the member's main home is in the constituency, for overnight stays in the constituency if the member's home is in London, or if a member's main home is neither in London nor the constituency, he can choose in respect of which of these areas to claim the allowance<sup>3</sup>. Members whose constituency is within 20 miles of the Palace of Westminster may not claim this allowance, but instead receive a London Costs Allowance with their salary<sup>4</sup>.

Members may not swap designation of their main residence and additional home, and members who are married or civil partners must designate the same main home<sup>5</sup>.

A flat-rate subsistence payment may be claimed for each night a member is away from his main home on parliamentary business<sup>6</sup>.

1 See generally the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.1. The maximum sum that may be claimed for PAAE in 2009-10 is £24,222. The allowance was previously called the 'Additional Costs Allowance'.

2 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.1.1.

3 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.1.2.

4 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.1.2. This '20 mile rule' replaced the earlier distinction between inner and outer London constituencies on 1 April 2010. The London Costs Allowance for 2009-10 is £7,500.

5 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.1.2. Members are required to notify in writing the House of Commons' Department of Resources the address of their main home; and when selling any property to inform the tax authorities whether they have been receiving PAAE as an additional home and are liable to capital gains tax.

6 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.1.3.2. The daily subsistence payment in 2009-10 is £25: para 2.1.3.2.

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### **919. Administrative and Office Expenditure and Staffing Expenditure.**

An administrative and office expenditure allowance ('AOE') is available towards the working costs of members and their staff, limited to accommodation for office or constituency surgery use or for occasional meetings, equipment and supplies for the office or surgery, work commissioned and other services, and certain travel costs not met out or travel expenditure<sup>1</sup>.

A separate allowance is available to meet the costs of staff engaged by a member for assisting him in the performance of his parliamentary duties<sup>2</sup>.

1 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.2. The allowance was formerly known as 'Incidental Expenses Provision'. The maximum sum that may be claimed for 2009-2010 is £22,393.

2 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.3. Members must ensure their staff are employed to meet a genuine need in supporting the member in performing his parliamentary duties, that they are able and qualified to do the job and actually doing it: generally see para 2.3.2. The maximum sum that may be claimed for 2009-2010 is £103,812.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(3) SALARIES, ALLOWANCES, AND PENSIONS/(ii) Allowances/920. Travel allowances.

## **920. Travel allowances.**

Members may claim reasonable travel and associated costs for journeys undertaken as part of their parliamentary duties<sup>1</sup>. This includes routine travel (such as between their home and Westminster, between their constituency and Westminster, within their constituency, and between their constituency and government and local authority offices), and extended travel (such as on a matter before a select committee of which a member serves, or to a devolved legislature)<sup>2</sup>.

Members may be reimbursed for the costs of up to three return visits to an institution or agency of the European Union, or to the national parliament of a Council of Europe member state, each to a maximum of two nights' subsistence<sup>3</sup>.

Spouses and civil partners, and dependent children, of a member are entitled to up to 30 single journeys each year between London and the member's constituency or main home<sup>4</sup>. The staff of a member may between them have their travel paid for up to 24 single journeys between London and the member's constituency assisting on parliamentary duties<sup>5</sup>.

1 See generally the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.4.

2 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.4.4.1, 2. The allowance covers public transport fares, mileage rates for travel by car or taxi, reasonable parking fees, and reasonable overnight accommodation if a journey needs to be broken: para 2.4.1.

3 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.4.4.3. The subsistence payable is calculated upon the Civil Service Class A rate: para 2.4.4.3.

4 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.4.4.4.

5 See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.4.4.5.

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### **921. Other allowances.**

A communications expenditure allowance is payable to assist members in communicating proactively with their constituents about their work in furtherance of their parliamentary duties<sup>1</sup>. Members are also provided with a limited quantity of House stationery and pre-paid envelopes for use in their parliamentary duties<sup>2</sup>.

A resettlement grant, designed to assist a member to adjust to non-parliamentary life is payable to members following a dissolution of Parliament, where they either do not stand for re-election, or fail to be re-elected<sup>3</sup>. A separate winding-up expenditure allowance is payable to such members, and also to members who leave during the course of a Parliament, where there are costs involved in completing any outstanding parliamentary duties<sup>4</sup>.

Further provision exists to contribute towards the costs of any necessary security measures to safeguard members, and for help for members with disabilities<sup>5</sup>.

Since 1991, a public duty costs allowance has been payable to former Prime Ministers to meet the continuing additional office costs which they are liable to incur because of their special position in public life<sup>6</sup>.

<sup>1</sup> See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.5. This allowance includes, for example, constituency newsletters, surveys and questionnaires, contact cards, distribution costs, advertising of surgery hours and constituency meetings, setting up and maintaining a website, and some capital purchases for equipment and computer software: para 2.5.1.

<sup>2</sup> See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.6.

<sup>3</sup> See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.7. The resettlement grant is assessed as a percentage of salary calculated by reference to age and length of service.

<sup>4</sup> See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.8.

<sup>5</sup> See the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009) para 2.9.

<sup>6</sup> See 188 HC Official Report (6th series), 27 March 1991, col 426w. The public duty costs allowance for 2008-09 was £90,854: see the House of Commons Factsheet (M6) *Ministerial Salaries*, available at the date at which this title states the law on the Parliament website at [www.parliament.uk](http://www.parliament.uk).

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/3. The House of Commons/(3) Salaries, Allowances, and Pensions/(iii) Governance of the Allowances/922. Review of allowances and their administration.

### **(iii) Governance of the Allowances**

#### **922. Review of allowances and their administration.**

The subject of members' allowances has been controversial and has been considered in numerous reviews and parliamentary debates<sup>1</sup>. In the House of Commons, the Committee on Members' Allowances<sup>2</sup> issues practice notes for the Department of Resources (which administers the allowances for members), keeps the guide<sup>3</sup> issued to members under review, and advises the Members Estimate Committee, the Speaker, and the Leader of the House<sup>4</sup>.

1 See, eg, 491 HC Official Report (6th series), 30 April 2009, col 1063 (when the Committee on Standards in Public Life was instructed to review MPs expenses); Senior Salaries Review Body: *Review of Parliamentary Pay, Pensions and Allowances 2007*, Report No 64 (Cm 7270-I); *Second Report of the Members Estimate Committee: Review of Members' Allowances: Issues*, (HC Paper 464 (2007-08)); *Third Report of the Members Estimate Committee: Review of Allowances* (HC Paper 578 (2007-08)) (debated 478 HC Official Report (6th series), 3 July 2008, col 1095); and *First Report of the Members Estimate Committee: Revised Green Book and Audit of Members' Allowances* (HC Paper 142 (2008-09)).

2 As to the constitution and functions of the committee see HC Standing Orders (Public Business) (2009) no 152G (Addendum, 10 March 2009).

3 In the House of Commons publication, *The Green Book: A Guide to Members' Allowances* (July 2009).

4 As to the Members Estimate Committee see PARA 989; and to the Speaker of the House of Commons see PARAS 931-936.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(3) SALARIES, ALLOWANCES, AND PENSIONS/(iii) Governance of the Allowances/923. The Independent Parliamentary Standards Authority.

### **923. The Independent Parliamentary Standards Authority.**

There is a body corporate known as the Independent Parliamentary Standards Authority ('IPSA')<sup>1</sup>, comprising a chairman and four ordinary members, at least one of whom must have held high judicial office, one of whom must be a person qualified to be an auditor for the National Audit Office<sup>2</sup>, and one of whom must be a person who has been (but is no longer) a member of the House of Commons (the 'parliamentary member')<sup>3</sup>. Apart from the parliamentary member, a person who has been a member of the House of Commons at any time within the last five years may not be a member of the IPSA<sup>4</sup>. Members are appointed for a fixed term of five years, subject to re-appointment once only for a further period not exceeding three years<sup>5</sup>.

The IPSA may do anything (except borrow money) which is calculated to facilitate the carrying out of its functions or is incidental or conducive to the carrying out of those functions<sup>6</sup>, and it must aim to do things efficiently and cost-effectively<sup>7</sup>. Provision is also made with regard to the formation of committees and sub-committees by the IPSA<sup>8</sup>; the regulation of IPSA procedure<sup>9</sup>; the appointment of a chief executive and other staff<sup>10</sup>; the separation of administrative and regulation functions<sup>11</sup>; the delegation, and contracting out of functions<sup>12</sup>; funding<sup>13</sup>; accounts and auditing<sup>14</sup>; the production of an annual report<sup>15</sup>; documentary evidence of documents executed under the seal of IPSA<sup>16</sup>; and related matters.

The IPSA's function include the payment of MPs allowances, the preparation and review of the scheme for MPs allowances and a code of conduct relating to financial interests<sup>17</sup>.

As from a day to be appointed the Speaker of the House of Commons<sup>18</sup>, after consulting the Commissioner for Parliamentary Investigations<sup>19</sup> and the House of Commons Committee on Standards and Privileges<sup>20</sup>, may agree with the IPSA that it is to carry out any registration function<sup>21</sup> specified in the agreement<sup>22</sup>, and the IPSA is to carry out the registration function accordingly<sup>23</sup>.

1 Parliamentary Standards Act 2009 s 3(1). Nothing in the Parliamentary Standards Act 2009 may be construed by any court in the United Kingdom as affecting the Bill of Rights 1689 s 1 art IX (see PARA 1082): Parliamentary Standards Act 2009 s 1. Nor, subject to certain specified exceptions, does anything in the Parliamentary Standards Act 2009 affect the House of Lords: see s 2.

2 He qualified under the National Audit Act 1983 Sch 3: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 722.

3 Parliamentary Standards Act 2009 Sch 1 para 1. Both the chair and an ordinary member of the IPSA are to be appointed by Her Majesty on an address of the House of Commons: Sch 1 para 2(1), (2). A motion for such an address may be made only with the agreement of the Speaker (Sch 1 para 2(3)), who must have selected the subject of the motion on merit on the basis of fair and open competition (Sch 1 para 2(4)). The Speaker must not select a candidate without the agreement of the Speaker's Committee for the Independent Parliamentary Standards Authority: Sch 1 para 2(5). The Speaker's Committee for the Independent Parliamentary Standards Authority comprises the Speaker, the Leader of the House of Commons, the chairman of the House of Commons Committee on Standards and Privileges, and five members of the House of Commons who are not government ministers appointed by the House of Commons: s 3(5),(6), Sch 3 para 1. As to the terms of office and proceedings of the committee see Sch 3 paras 2, 3. The Parliamentary Standards Act 2009 Sch 1 paras 17, 18 are to be brought into force as from a day to be appointed by order under s 14(3). At the date at which this volume states the law no such day had been appointed.

4 Parliamentary Standards Act 2009 Sch 1 para 1(5). See also note 3.

5 See the Parliamentary Standards Act 2009 Sch 1 para 4.

6 Parliamentary Standards Act 2009 Sch 1 para 11.

7 Parliamentary Standards Act 2009 Sch 1 para 10.

8 See the Parliamentary Standards Act 2009 Sch 1 para 12.

9 See the Parliamentary Standards Act 2009 Sch 1 para 13.

10 See the Parliamentary Standards Act 2009 Sch 1 paras 14-16.

11 See the Parliamentary Standards Act 2009 Sch 1 paras 17. The IPSA's administration functions are its functions under ss 4, 5(1), 6 (see PARAS 915, 924) and the function of maintaining and publishing the register under s 8 (see PARA 1072): Sch 1 para 18(1). The IPSA's regulation functions are its functions under ss 5(3), (4), 8 (see PARAS 924, 1072) (except as mentioned in above), and 9(5)(b), (7)(c), (9) and (10) (see PARA 925): Sch 1 para 18(2). See also note 3.

12 See the Parliamentary Standards Act 2009 Sch 1 paras 19-21.

13 See the Parliamentary Standards Act 2009 Sch 1 para 22.

14 See the Parliamentary Standards Act 2009 Sch 1 paras 23-24.

15 See the Parliamentary Standards Act 2009 Sch 1 para 25.

16 See the Parliamentary Standards Act 2009 Sch 1 para 26.

17 See PARAS 924, 1072.

18 As to the Speaker of the House of Commons see PARAS 931-936.

19 As to the Commissioner see PARA 925.

20 As to the Committee on Standards and Privileges see PARA 988.

21 'Registration function' means a function which is a function of the Parliamentary Commissioner for Standards on the date this Act is passed, which relates to registration, and which the IPSA could not carry out under any other provision of the Parliamentary Standards Act 2009: s 11(3). The Parliamentary Standards Act 2009 s 11 is to be brought into force as from a day to be appointed by order under s 14(3). At the date at which this volume states the law no such day had been appointed. Section 11 expires at the end of the period of two years starting with the day on which s 8 (see PARA 1072) comes into force (the 'effective period'): s 15(1), (2). A Minister of the Crown may by order extend, or (on one or more occasions) further extend, the effective period: s 15(3). For further provision with regard to the expiry of provisions see s 15(4), (5).

22 Parliamentary Standards Act 2009 s 11(1), (9). The registration function may relate to a matter arising before or after the agreement is made or the date the Parliamentary Standards Act 2009 is passed: s 11(1). The Speaker must lay an agreement under s 11(1) before the House of Commons: s 11(7). The agreement does not come into effect until it is approved by a resolution of the House of Commons: s 11(8). See also note 21.

23 Parliamentary Standards Act 2009 s 11(2). See also note 21.

## **UPDATE**

### **923 The Independent Parliamentary Standards Authority**

NOTE 3--Parliamentary Standards Act 2009 Sch 1 paras 17, 18 (in part) in force 7 May 2010: SI 2010/1033.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(3) SALARIES, ALLOWANCES, AND PENSIONS/(iii) Governance of the Allowances/924. MPs' allowance scheme.

#### **924. MPs' allowance scheme.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The Independent Parliamentary Standards Authority ('IPSA')<sup>2</sup> must pay allowances to members of the House of Commons in accordance with the MPs' allowances scheme<sup>3</sup>. The IPSA must additionally prepare that scheme, review it regularly and revise it as appropriate<sup>4</sup>. Such a scheme may, for example:

- 40 (1) provide for allowances to be payable in respect of specified kinds of expenditure or in specified circumstances<sup>5</sup>;
- 41 (2) provide for allowances to be payable only on specified conditions (such as a condition that claims for allowances must be supported by documentary evidence)<sup>6</sup>;
- 42 (3) impose limits on the amounts that may be paid<sup>7</sup>.

It may provide also for allowances to be payable in connection with a person's ceasing to be a member of the House of Commons<sup>8</sup>. A scheme made under this section does not affect the provision of pensions to members<sup>9</sup>.

No allowance is to be paid to a member under the scheme unless a claim for the allowance has been made to the IPSA by the member<sup>10</sup>. On receipt of a claim, the IPSA must determine whether to allow or refuse it, and if it is allowed, determine how much of the amount claimed is to be allowed and pay it accordingly<sup>11</sup>. If the IPSA determines that a claim is to be refused or that only part of the amount claimed is to be allowed, and the member asks the IPSA to review the determination, the IPSA must review whether the determination was properly made, and in light of that review, decide whether or not to confirm or alter the determination<sup>12</sup>.

The MPs' allowances scheme may include further provision about how claims are to be dealt with, and provision about deducting from payments of allowances amounts that a member is to repay<sup>13</sup>. The scheme may provide for an allowance to which a member is entitled under the scheme to be paid to another person at the member's direction<sup>14</sup>.

The IPSA must provide to members:

- 43 (a) details of any general information or guidance about taxation issues<sup>15</sup> published by Her Majesty's Revenue and Customs that it considers they should be aware of<sup>16</sup>; and
- 44 (b) any other general information or guidance about taxation issues that it considers appropriate (consulting Her Majesty's Revenue and Customs for this purpose as it considers appropriate)<sup>17</sup>.

A member of Parliament commits an offence if he makes a claim under the MPs' allowances scheme and provides information for the purpose of the claim that the member knows to be false or misleading in a material respect<sup>18</sup>.

1 The Parliamentary Standards Act 2009 ss 5, 10 are to be brought into force as from a day to be appointed by order under s 14(3). At the date at which this volume states the law no such day had been appointed. Section 10 expires at the end of the period of two years starting with the day on which s 8 (see PARA 1072) comes into force (the 'effective period'): s 15(1), (2). A Minister of the Crown may by order extend, or (on one or more occasions) further extend, the effective period: s 15(3). For further provision with regard to the expiry of provisions see s 15(4), (5).

2 As to the IPSA see PARA 923.

3 Parliamentary Standards Act 2009 s 5(1). 'MPs' allowance scheme' means the scheme prepared under s 5 as it is in effect for the time being: s 5(2). See also note 1.

4 Parliamentary Standards Act 2009 s 5(3). In preparing or revising the scheme, the IPSA must consult: (1) the Speaker of the House of Commons; (2) the Committee on Standards in Public Life; (3) the Leader of the House of Commons; (4) any committee of the House of Commons nominated by the Speaker; (5) members of the House of Commons; (6) the Review Body on Senior Salaries; (7) Her Majesty's Revenue and Customs; (8) the Treasury; and (9) any other person the IPSA considers appropriate: s 5(4). The Speaker must lay the scheme (or revision) before the House of Commons (s 5(5)), and it comes into effect on the date specified in the scheme (or revision) (s 5(6)). A Minister of the Crown may by order make supplementary, incidental, transitional, transitory or saving provision that the House of Commons' rules about members' allowances have effect for specified purposes as if contained in a scheme under s 5: see s 13(1), (2)(a). For further provision with regard to supplementary, incidental, transitional, transitory or saving provisions see s 13(3)-(10). As to the Speaker of the House of Commons see PARAS 931-936. As to the House's rules about members allowances see PARA 917 et seq. See also note 1.

5 Parliamentary Standards Act 2009 s 5(7)(a). See also note 1.

6 Parliamentary Standards Act 2009 s 5(7)(b). See also note 1.

7 Parliamentary Standards Act 2009 s 5(7)(c). See also note 1.

8 Parliamentary Standards Act 2009 s 5(8). References in the Parliamentary Standards Act 2009 to the payment of an allowance to a member are to be read accordingly: s 5(8).

9 See the Parliamentary Standards Act 2009 s 5(9). As to the provision of pensions see PARA 926 et seq. See also note 1.

10 See the Parliamentary Standards Act 2009 s 6(1), (2). Such a claim may be made by someone other than the member where the scheme so provides: see s 5(2).

11 Parliamentary Standards Act 2009 s 6(3). See also note 1.

12 Parliamentary Standards Act 2009 s 6(4), (5). When the review is complete the IPSA must make any necessary adjustments accordingly: s 6(5). See also note 1.

13 Parliamentary Standards Act 2009 s 6(6). See also note 1.

14 Parliamentary Standards Act 2009 s 6(7). Where such a direction is made references in the Parliamentary Standards Act 2009 to the payment of an allowance to a member are to be read accordingly: s 6(7). See also note 1.

15 'Taxation issues' means: (1) issues about the taxation of salaries payable under the Parliamentary Standards Act 2009 s 4 (see PARA 915) and allowances payable under the MPs' allowances scheme; and (2) any other issues about taxation arising in connection with those salaries and allowances: s 7(2).

16 Parliamentary Standards Act 2009 s 7(1)(a), (3). See also note 1.

17 Parliamentary Standards Act 2009 s 7(1)(b), (3). See also note 1.

18 Parliamentary Standards Act 2009 s 10(1). A person guilty of an offence under s 10(1) is liable on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both; and on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine or to both: s 10(2). In the application of this section in England and Wales in relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1), or in Northern Ireland, the first reference to 12 months above is to be read as a reference to six months: s 10(3). See also note 1.

## UPDATE

### 924 MPs' allowance scheme

TEXT AND NOTE 1--Day appointed is 29 March 2010 in relation to Parliamentary Standards Act 2009 ss 5, 6, and 7 May 2010 in relation to ss 7, 10: SI 2010/1033, SI 2010/1278.

Halsbury's Laws of England/Parliament (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(3) SALARIES, ALLOWANCES, AND PENSIONS/(iii) Governance of the Allowances/925. The Commissioner for Parliamentary Investigations.

### 925. The Commissioner for Parliamentary Investigations.

As from a day to be appointed the following provisions have effect<sup>1</sup>. There is an officer known as the Commissioner for Parliamentary Investigations<sup>2</sup> who holds office in accordance with terms and conditions determined by the Speaker of the House of Commons<sup>3</sup>.

The Commissioner may conduct an investigation if he has reason to believe that a member of the House of Commons may have been paid an amount under the MPs' allowances scheme<sup>4</sup> that should not have been allowed, or may have failed to comply with the registration requirements of the MPs' code of conduct relating to financial interests<sup>5</sup>. An investigation may be conducted on the Commissioner's own initiative, at the request of the member, or in response to a complaint by an individual<sup>6</sup>. The Independent Parliamentary Standards Authority ('IPSA')<sup>7</sup> must provide the Commissioner with any information he reasonably requires<sup>8</sup>.

If after conducting an investigation the Commissioner finds that the member was paid an amount under the scheme that should not have been allowed, the Commissioner must refer his findings to the House of Commons Committee on Standards and Privileges<sup>9</sup>. Although he need not refer the findings if the member accepts them, such other conditions as may be specified by the IPSA have been met, and the member repays to the IPSA such amount, and in such manner and within such time, as the Commissioner considers reasonable<sup>10</sup>.

If after conducting an investigation the Commissioner finds that the member failed to comply with a requirement included in the code of conduct relating to financial interests<sup>11</sup> he must refer his findings to the Committee on Standards and Privileges<sup>12</sup>. Although he need not refer the findings if the member accepts them, he considers that the financial interest concerned was minor or that the failure was inadvertent, such other conditions as may be specified by the IPSA are, in his view, met in relation to the case, and the member takes any steps required by the Commissioner to correct the register<sup>13</sup>.

If the Commissioner finds that a member he is investigating has not provided him with information which he reasonably requires for the purposes of the investigation, he may refer the finding to the Committee on Standards and Privileges<sup>14</sup>.

The procedures followed by the Commissioner in relation to investigations<sup>15</sup>, complaints by individuals against a member<sup>16</sup>, and publication of findings, are determined by the IPSA<sup>17</sup>. The procedures must be fair, and in particular must provide for the member who is the subject of an investigation or complaint to be given the opportunity to make representations to the Commissioner about the investigation or complaint<sup>18</sup>, or findings<sup>19</sup>.

The Speaker, after consulting the IPSA and the House of Commons Committee on Standards and Privileges<sup>20</sup>, may agree with the Commissioner that he is to carry out any relevant function<sup>21</sup> specified in the agreement<sup>22</sup>, and the Commissioner is to carry out the relevant function accordingly<sup>23</sup>.

1 The Parliamentary Standards Act 2009 ss 3(3), 9, 11, Sch 2 are to be brought into force as from a day to be appointed by order under s 14(3). At the date at which this volume states the law no such day had been appointed. Sections 3(3), 9, 11 and Sch 2 expire at the end of the period of two years starting with the day on which s 8 (see PARA 1072) comes into force (the 'effective period'): s 15(1), (2). A Minister of the Crown may by order extend, or (on one or more occasions) further extend, the effective period: s 15(3). For further provision with regard to the expiry of provisions see s 15(4), (5).

2 Parliamentary Standards Act 2009 s 3(3). The Commissioner is appointed by Her Majesty on an address of the House of Commons: Sch 2 para 1(1). A motion for such an address may be made only with the agreement of the Speaker (Sch 2 para 1(2)), and the person the subject of the motion must have been selected by the Speaker, with the agreement the agreement of the Speaker's Committee for the Independent Parliamentary Standards Authority, on merit on the basis of fair and open competition (Sch 2 para 1(3), (4)). As to the Speaker's Committee for the Independent Parliamentary Standards Authority see PARA 923 note 4. See also note 1.

3 See the Parliamentary Standards Act 2009 Sch 2 para 2. The Commissioner is to be appointed for a fixed term not exceeding five years: Sch 2 para 3(1). A person appointed as the Commissioner may not be appointed again: Sch 2 para 3(2). The Commissioner may resign from office by giving written notice to the Speaker: Sch 2 para 4(1). Her Majesty may remove the Commissioner from office on an address of both Houses of Parliament: Sch 2 para 4(2). Further provision is made with regard to the Commissioner: see Sch 2 paras 5-8. As to the Speaker of the House of Commons see PARAS 931-936. See also note 1.

4 See PARA 924.

5 Parliamentary Standards Act 2009 s 9(1). As to the MPs' code of conduct relating to financial interests see PARA 1072. See also note 1.

6 Parliamentary Standards Act 2009 s 9(2). See also note 1.

7 As to the IPSA see PARA 923.

8 Parliamentary Standards Act 2009 s 9(3). See also note 1.

9 Parliamentary Standards Act 2009 s 9(4). As to the House of Commons Committee on Standards and Privileges see PARA 988. See also note 1.

10 Parliamentary Standards Act 2009 s 9(5). As to the need to consult when setting conditions see note 17. See also note 1.

11 Is a requirement included by virtue of the Parliamentary Standards Act 2009 s 8(7): see PARA 1072.

12 Parliamentary Standards Act 2009 s 9(6). As to the need to consult when setting conditions see note 17. See also note 1.

13 Parliamentary Standards Act 2009 s 9(7). See also note 1.

14 Parliamentary Standards Act 2009 s 9(8). See also note 1.

15 Is an investigation under s 9(1): see the text to notes 4-5.

16 le a complaint under s 9(2): see the text to note 6.

17 Parliamentary Standards Act 2009 s 9(9). In determining the procedures, or any conditions under s 9(5) (b) (see the text to note 10), or s 9(7)(c) (see the text to note 13) the IPSA must consult the Leader of the House of Commons, the Committee on Standards and Privileges, the Commissioner, and any other person the IPSA considers appropriate: s 9(10).

18 Parliamentary Standards Act 2009 s 9(11)(a). The member concerned must, in the case of findings, have the opportunity to make representations before those findings are referred to the Committee on Standards and Privileges: s 9(11)(b). The powers of the Commissioner, together with any provision in the Parliamentary Standards Act 2009, may not be construed by any court as affecting Article IX of the Bill of Rights 1689: Parliamentary Standards Act 2009 s 1. Procedures by virtue of s 9(11)(a) must include an opportunity to be heard in person, and an opportunity, where the Commissioner considers it appropriate, to call and examine witnesses: s 9(12). See also note 1.

19 Parliamentary Standards Act 2009 s 9(11)(b). The member concerned must have the opportunity to make representations before the findings are referred to the Committee on Standards and Privileges: s 9(11)(b). See also note 1.

20 As to the Committee on Standards and Privileges see PARA 988.

21 'Relevant function' means a function which is a function of the Parliamentary Commissioner for Standards on the date the Parliamentary Standards Act 2009 is passed, and which the Commissioner could not carry out under any other provision of that Act: s 11(6).

22 Parliamentary Standards Act 2009 s 11(4), (9). The relevant function may relate to a matter arising before or after the agreement is made or the date the Parliamentary Standards Act 2009 is passed: s 11(4). The Speaker must lay an agreement under s 11(4) before the House of Commons: s 11(7). The agreement does not come into effect until it is approved by a resolution of the House of Commons: s 11(8).

23 Parliamentary Standards Act 2009 s 11(5).

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#### **(iv) Members' Pensions**

##### **926. The Parliamentary Contributory Pension Fund.**

The pension scheme for members of Parliament, government ministers, and other parliamentary office-holders is the Parliamentary Contributory Pension Fund ('PCPF')<sup>1</sup>.

The PCPF is a funded final salary scheme. Contributions are deducted from the salaries of participating members and participating office holders at the rate selected when joining, and these sums are paid into the fund<sup>2</sup>. An exchequer contribution is made each financial year out of money provided by Parliament, of the amount which the Government Actuary advises<sup>3</sup>. He must also make a report every three years to the trustees of the fund and to the Treasury on the general financial position of the fund as at the commencement of the period of three years in which the report is made, a copy of which must be laid before the House of Commons<sup>4</sup>.

The Fund is governed by a Board of Trustees, most of whom are in practice serving members of the House of Commons, and who delegate the administration of the PCPF to the House of Commons Department of Resources<sup>5</sup>. All pensions or other payments payable under this scheme by the trustees are paid out of the fund, and all sums received by the trustees are paid into the fund<sup>6</sup>. The trustees may invest the assets of the fund, whether at the time in a state of investment or not, in any investment whatsoever and may also from time to time vary any such investments<sup>7</sup>.

The Leader of the House may, with the consent of the Treasury, by regulations make provision with respect to the Fund and with respect to the application of the assets of the Fund in or towards the provision of pensions for or in respect of persons with service as any of the following<sup>8</sup>:

- 45 (1) a member of the House of Commons<sup>9</sup>;
- 46 (2) the holder of a ministerial office<sup>10</sup>;
- 47 (3) the holder of an office as opposition leader or whip<sup>11</sup>;
- 48 (4) the Speaker of the House of Lords<sup>12</sup>; or
- 49 (5) the holder of the office of Chairman of Ways and Means, Deputy Chairman of Ways and Means, Chairman of Committees of the House of Lords or Deputy Chairman of Committees of the House of Lords<sup>13</sup>.

No such regulations may, however, be made unless the trustees of the fund and persons appearing to the Leader of the House of Commons to represent persons likely to be affected by the regulations have first been consulted about them<sup>14</sup>. Where the Leader of the House of Commons has made any proposals for the making of such regulations, a copy of any representations made to him by the trustees of the fund about the proposals must be laid before the House of Commons<sup>15</sup>.

Pensions may only be drawn after the member has ceased to be a member of the House, is not standing for re-election, does not hold a paid qualifying office under the scheme, and has reached the qualifying age<sup>16</sup>. A paid-up ill-health pension is payable where a member ceases to be an MP as a direct consequence of his ill-health<sup>17</sup>. On retirement a member can exchange part of their pension for a tax-free lump sum. In the case of a member's death in service, a lump sum death gratuity, equal to four times the basic annual parliamentary salary, is payable at the discretion of the trustees<sup>18</sup>. In addition, the surviving spouse or partner, and dependent children, of a member are entitled to a proportion of the member's pension from the Fund<sup>19</sup>.

1 See the Parliamentary and other Pensions Act 1972 s 1, Sch 1 (repealed); and the Parliamentary and other Pensions Act 1987 s 1(1) (which continues the fund in force). For a full list of legislative provisions relating to the Fund see *Parliamentary Contributory Pension Fund Account 2006-07* (HC Paper 297 (14 March 2008)), pp 2-3. Former members over 65 years of age who completed at least ten years' service prior to 1964 are entitled to as-of-right payments from the House of Commons Members' Fund, and if suffering hardship may apply for payments from the House of Commons Members' Fund: see the House of Commons Members' Fund Acts 1939-62. The Acts which may be cited by this collective title are the House of Commons Members' Fund Act 1939, the House of Commons Members' Fund Act 1948, the House of Commons Members' Fund Act 1957, and the House of Commons Members' Fund Act 1962: see the House of Commons Members' Fund Act 1957 s 3; the House of Commons Members' Fund Act 1962 s 2(3). As to the establishment of the fund see the House of Commons Members' Fund Act 1939 s 1(1) (amended by the House of Commons Members' Fund Act 1948 s 1(1); and SI 2005/3298).

2 See the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, Pt D (amended by SI 2002/1807, SI 2004/2416, SI 2005/887, SI 2006/920, SI 2009/3154). Members can opt for different levels of contribution and annual pension, 10% of their salary under which they accrue a pension at the rate of one-fortieth, or 6% of their salary at the rate of one-fiftieth, or 5.5% of their salary at the rate of one-sixtieth: see 485 HC Official Report (6th series), 17 December 2008, col 1162.

3 See the Parliamentary and other Pensions Act 1972 s 3(1), (2) (s 3(2) amended by the Ministerial and other Pensions and Salaries Act 1991 s 6(1)).

4 Parliamentary and other Pensions Act 1987 s 3(3)-(5) (s 3(3) amended by the Ministerial and other Pensions and Salaries Act 1991 s 6(1)).

5 The House of Commons has power by Order of the House to remove a trustee of the Fund and, subject to any provision made under the Parliamentary and other Pensions Act 1987 s 2 (see note 8) as to the qualification or number of trustees, to fill any vacancy in the trustees and to appoint additional trustees: Parliamentary and other Pensions Act 1987 s 1(2).

6 See the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, reg B1(2).

7 Parliamentary and other Pensions Act 1987 s 1(3).

8 Parliamentary and other Pensions Act 1987 s 2(1), (2). Such regulations may not provide for the application of any of the assets of the fund in or towards the provision of pensions for or in respect of persons with service as Lord Chancellor; and regulations so made may not provide for the application of any of those assets in or towards the provision of pensions for or in respect of any person with service as Prime Minister and First Lord of the Treasury or Speaker of the House of Commons unless he has in accordance with the regulations elected to contribute to the fund out of his remuneration as a member of that House while holding that office: s 2(3) (amended by the Ministerial and other Pensions and Salaries Act 1991 s 2(1)).

Without prejudice to the generality of the Parliamentary and other Pensions Act 1987 s 2(1), regulations under this section may: (1) include all or any of the provisions specified in Sch 1; (2) make provision which has effect from a date earlier than the date of the making of the regulations containing the provision, or in relation to service before the passing of this Act (including, in the case of service falling within head (2) or (3) above, service before the passing of the Ministerial and other Salaries Act 1975); (3) make different provision in relation to different cases, circumstances or persons; and (4) make such incidental, consequential and transitional provision as the Leader of the House of Commons considers appropriate: s 2(4). No such regulation may be construed as restricting the powers of the trustees of the fund under s 1(3) (see the text to note 7): s 2(5).

The Leader of the House of Commons may not make any regulations in relation to an accrued right which put any person in a worse position than he would have been in apart from the regulations unless he is satisfied: (a) that the person in respect of whose service the right has accrued or, as the case may be, will have accrued by the time when the regulations come into force is, at the time of the making of the regulations, in service to which this section applies; or (b) that an opportunity is given under the regulations for that person or (where that person has died) for the persons who are or may become entitled by virtue of that right to or to the benefit of any pension, or for a person acting on behalf of that person or those persons, to opt for the accrued right to remain unaffected by the regulations: s 2(6). For these purposes 'accrued right', in relation to any regulations made under this section, means so much of any right or entitlement to or in respect of a pension payable out of the Fund (including any future or contingent right or entitlement) as has accrued under the Parliamentary pension scheme in respect of so much of any person's service as was before the making of the regulations; or by the time when the regulations come into force, will have accrued under that scheme in respect of any service of a person whose service to which this section applies includes a period of service before the making of the regulations: s 2(10).

As to the regulations under which the fund is currently governed see the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253 (amended by SI 1999/780, SI 2001/2649, SI 2001/3649, SI 2002/1807, SI 2002/1887, SI 2004/2416, SI 2004/2417, SI 2005/887, SI 2006/920, SI 2006/1965, SI 2007/270, SI 2009/1920, SI 2009/3154).

9 Parliamentary and other Pensions Act 1987 s 2(2)(a). For these purposes a person must be treated as a member of the House of Commons at any time if, at that time, a salary is or was payable to him under such resolutions of the House of Commons relating to the remuneration of members as are or were for the time being in force: s 5(2).

10 Parliamentary and other Pensions Act 1987 s 2(2)(b). The ministerial offices referred to mean any of the offices specified in the Ministerial and other Salaries Act 1975 s 1(1), Sch 1 Pts I-IV: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 423.

11 Parliamentary and other Pensions Act 1987 s 2(2)(c). The offices referred to are those specified in the Ministerial and other Salaries Act 1975 s 1(1)(b), Sch 2 Pt I: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 219.

12 Parliamentary and other Pensions Act 1987 s 2(2)(ca) (added by SI 2006/1640). As to the Speaker of the House of Lords see PARAS 850, 851.

13 Parliamentary and other Pensions Act 1987 s 2(2)(d).

14 Parliamentary and other Pensions Act 1987 s 2(7).

15 Parliamentary and other Pensions Act 1987 s 2(8).

16 See the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, reg F1(1). From 6 April 2010, the minimum retirement age is 55 years.

17 See the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, Pt J (amended by SI 2006/920, SI 2009/1920).

18 See the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, reg L1 (amended by SI 1995/2867, SI 1996/2406, SI 2002/1807, SI 2005/887, SI 2006/920).

19 See the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, Pt K (amended by SI 2002/1807, SI 2005/887, SI 2006/920, SI 2009/1920).

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## **927. Pensions of ministers and senior office holders.**

Supplementary pension arrangements are provided for the Prime Minister and the Speaker of the House of Commons<sup>1</sup>, and government ministers and senior office holders<sup>2</sup>. Its operation is similar to the scheme for members, though the pension benefit is calculated by reference to special contribution factors such as varying salary levels within each contribution year and different figures for relevant terminal salary<sup>3</sup>.

1 See the Parliamentary and other Pensions Act 1972 ss 26, 27; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 426. The Prime Minister and First Lord of the Treasury, and the Speaker of the House of Commons may exercise an option in writing to become a participating member in the principal scheme: Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, reg C2(1). 'Principal scheme' means the scheme from time to time in force: see reg A1; and PARA 926. As to the Speaker see PARAS 931-936.

2 'Office holder' means the holder of a qualifying office, and 'qualifying office' means any of the following: (1) the offices specified in the Ministerial and other Salaries Act 1975 Sch 1, Pts I-IV, except the office of Prime Minister and First Lord of the Treasury (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 219, 424-425.); (2) the offices specified in Sch 2 Pt I (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 219); (3) the office of Speaker of the House of Lords; (4) the offices of Chairman of Ways and Means, Deputy Chairman of Ways and Means, Chairman of Committees of the House of Lords and Deputy Chairman of Committees of the House of Lords; and (5) the position of Chairman of a Select Committee (if held by a participating member on or after 26 November 2003): see the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, reg C3(3), (3A) (amended by SI 2004/2416, SI 2006/1965). As to ways and means see PARA 1042 et seq. As to the Chairman and Deputy Chairman of Committees see PARA 852. As to Select Committees see PARAS 872 et seq, and 979 et seq. As to the government's acceptance of the Senior Salaries Review Body's recommendation that pension arrangements for the Prime Minister and Lord Chancellor should be similar to those for Secretaries of State see 470 HC Official Report (6th series), 16 January 2008, col 34 WS.

3 See the Standard Note *Pensions of Ministers and Senior Office Holders* (19 May 2009 (SN/BT/4856)).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(i) In general/928. Places of business.

## **(4) CONDUCT OF BUSINESS**

### **(i) In general**

#### **928. Places of business.**

The business of the House of Commons is transacted (1) in the House itself; (2) in committees of the whole House; (3) in general committees and public bill committees, appointed for the consideration of bills, statutory instruments and certain other matters; (4) in select committees and joint committees of the two Houses, appointed to consider bills or draft bills, or expenditure, administration and policy of government departments and associated bodies, or other matters; (5) in various other committees, appointed under the standing orders of the House every session for certain purposes; (6) in private bill committees; and (7) in Westminster Hall sittings<sup>1</sup>.

<sup>1</sup> As to the conduct of business see PARA 929 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(i) In general/929. Regulation of conduct of business.

### **929. Regulation of conduct of business.**

The conduct of business in the House of Commons and the procedure of the House on public and private business are fixed and regulated by the standing orders of the House, by numerous resolutions and orders which have been agreed to from time to time and which have continued to be acted upon by the House, and by a series of precedents and customs which are based partly upon the traditions of the House and partly upon the rulings given from time to time from the chair on questions of practice and points of order<sup>1</sup>.

<sup>1</sup> See PARA 930 et seq; and see generally Erskine May's Parliamentary Practice (23rd Edn, 2004) ch 12 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(ii) The House of Commons and the Speaker/930. Public and private business.

## **(ii) The House of Commons and the Speaker**

### **930. Public and private business.**

In the House of Commons, the business which is transacted in the House itself is similar to that which is transacted in the House of Lords<sup>1</sup>. It is divided into public business and private business. Public business consists of all the stages of public bills or other orders of the day, and of notices of motions<sup>2</sup> other than those relating to private business. Private business includes the first, second and third readings, and the report stage, of private bills and provisional order confirmation bills, as well as the consideration of the standing orders which relate to such bills.

<sup>1</sup> See PARA 860.

<sup>2</sup> An order of the day is business appointed for that day by order of the House. A notice of motion is a notice tabled by an individual member or by several members. By the practice of the House notice of a substantive motion (ie notice of the intention of a member to call the attention of the House to some particular subject which does not arise out of the orders of the day) or to move a resolution, or to ask for a return, must as a general rule be printed on the notice paper. Certain formal motions and matters of privilege do not, however, require notice. The requirement of notice may also be waived with the general concurrence of the House. See further Erskine May's Parliamentary Practice (23rd Edn, 2004) p 382 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(ii) The House of Commons and the Speaker/931. The Speaker.

### **931. The Speaker.**

The deliberations of the House of Commons, except when the House is in committee<sup>1</sup>, are presided over by the Speaker, who is chosen by the House at the beginning of every new Parliament<sup>2</sup>. He is the guardian of the privileges of the House, and its spokesman and representative upon all occasions<sup>3</sup>.

Impartiality and authority are the principal characteristics of the office of Speaker<sup>4</sup>.

<sup>1</sup> See PARA 937 et seq.

<sup>2</sup> For the procedure with regard to the election of the Speaker and the confirmation of his election by the Crown see PARAS 1006-1008. The Speaker receives a salary as Speaker, which is charged upon the Consolidated Fund, and is subject to revision by Order in Council approved by resolution of the House of Commons: see the Ministerial and other Salaries Act 1975 s 1(3) (amended by SI 1996/1913); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 423. This is in addition to his salary as a member. During a dissolution of Parliament the Speaker at the time of the dissolution is deemed to remain Speaker for the purposes of the Ministerial and other Salaries Act 1975 until a Speaker is chosen by the new Parliament (see s 1(3) (as so amended)); and continues in office as a member of the House of Commons Commission (House of Commons (Administration) Act 1978 s 1(5), Sch 1 para 3(1)). See further PARA 1006. Upon his resignation of office the Speaker is usually created a peer, and he is granted a pension under the Parliamentary and other Pensions Act 1972 s 26(1): see PARA 927.

<sup>3</sup> See PARAS 932-933.

<sup>4</sup> See generally Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 218 et seq; R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 5-015 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(ii) The House of Commons and the Speaker/932. Guardian of the privileges of the House.

### **932. Guardian of the privileges of the House.**

As the guardian of the privileges of the House of Commons, the Speaker, immediately after the confirmation of his election has been announced to him by the Lord Chancellor, demands from the Crown the rights and privileges of the Commons, and, throughout the duration of the Parliament, is responsible for the preservation of the dignity, the maintenance of the privileges and the due enforcement of the rights of the House of Commons. To the Speaker, therefore, belongs the duty of executing all the orders of the House, and accordingly he issues warrants for the committal of persons who have incurred the displeasure of the House, for the attendance of witnesses in custody and for the issue of writs for filling seats in the House which become vacant during the course of a Parliament.

It is also the duty of the Speaker to draw the attention of the House to, and to express his views with regard to, any infringements of the financial privileges of the Commons contained in bills or amendments sent down from the House of Lords<sup>1</sup>.

<sup>1</sup> See PARAS 821-827.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(ii) The House of Commons and the Speaker/933. Spokesman and representative of the House.

### **933. Spokesman and representative of the House.**

As the spokesman of the House of Commons, the Speaker presents its addresses to the monarch on ceremonial occasions, conveys its thanks, and expresses its censures and warnings, to those concerned; and to him, as the official representative of the House, are addressed any communications from outside which are sent to that House<sup>1</sup>.

<sup>1</sup> As to communications from the monarch see PARAS 810-812.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(ii) The House of Commons and the Speaker/934. Presiding officer of the House.

### **934. Presiding officer of the House.**

As the presiding officer of the House of Commons, the Speaker is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate and to maintain order. Standing orders give the Speaker discretionary powers, for instance, to grant emergency debates, to allow urgent questions to be asked, to select amendments to motions and bills and to accept motions which will have the effect, if agreed to, of bringing a debate to an end. He puts the question on every motion and declares the decision of the House with regard to it, but he will not submit any motion to the House which infringes any standing order or rule of procedure, and he is the sole judge of the admissibility or propriety of a question which any member proposes to ask a minister or other member in the House<sup>1</sup>.

<sup>1</sup> As to the maintenance of order see PARA 956 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(ii) The House of Commons and the Speaker/935. Statutory powers and duties.

### **935. Statutory powers and duties.**

In addition to his other functions<sup>1</sup>, the Speaker is empowered to perform certain specified duties with regard to 'money bills'<sup>2</sup> and to bills which, having been passed by the House of Commons, have not been passed by the other House<sup>3</sup>. He has statutory powers and duties as chairman of the Speaker's Committee<sup>4</sup>, the House of Commons Commission<sup>5</sup>, and in connection with the nomination of the Leader of the Opposition<sup>6</sup>, the issuing of writs for elections during recesses<sup>7</sup> and the certification of the mental illness of a member<sup>8</sup>.

- 1 See PARAS 931-934.
- 2 le as defined in the Parliament Act 1911 s 1(2): see PARA 827.
- 3 See the Parliament Act 1911 ss 1(3), 2(2), (4) (s 2(4) amended by the Parliament Act 1949 s 1); PARA 827; and **PARLIAMENT** vol 34 (Reissue) PARA 831.
- 4 See the Political Parties Elections and Referendums Act 2000 s 2, Sch 2; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 44.
- 5 See the House of Commons (Administration) Act 1978 s 1(1), (2)(a), (5), Sch 1 para 4; and PARA 946.
- 6 See the Ministerial and other Salaries Act 1975 s 2(2); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 219.
- 7 See the Recess Elections Act 1975 s 1(2); and PARA 1095.
- 8 See the Mental Health Act 1983 s 141; and PARAS 900, 1094.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(ii) The House of Commons and the Speaker/936. Criticism of the Speaker.

### **936. Criticism of the Speaker.**

The House of Commons will allow the conduct of the Speaker to be questioned only by means of a substantive motion, and will not tolerate a reflection upon his conduct to be made in any other way by one of its members either inside or outside the precincts of the House. Nor may any notice of a question to the Speaker be given by any member in the House, although questions relating to his responsibilities may be asked of him by private notice with his consent<sup>1</sup>. However, if an appeal is made to him by a member with regard to a question of order, the Speaker will state his opinion upon the point in question.

<sup>1</sup> Questions relating to the House of Commons Commission are answered by a private member who is a member of the commission and not by the Speaker who is its chairman.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iii) Committee of the whole House and the Chairmen/937. Purposes for which the House of Commons goes into committee.

### **(iii) Committee of the whole House and the Chairmen**

#### **937. Purposes for which the House of Commons goes into committee.**

The House of Commons resolves itself into a committee of the whole House to consider a public bill after it has been read a second time, or any bill which is recommitted after it has been reported from a select committee, or any bill which has been specially recommitted<sup>1</sup>.

<sup>1</sup> See **PARLIAMENT** vol 34 (Reissue) PARAS 770, 813. Until 1967 a large part of the financial business of the House was dealt within committees of the whole House, most notably the business of supply and ways and means, as to which see PARAS 1043 et seq, 1049 et seq. It is difficult to envisage any circumstances in which the House would use the procedure of the committee of the whole House other than for the detailed consideration of legislation.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iii) Committee of the whole House and the Chairmen/938. Appointment and constitution of committee of the whole House.

### **938. Appointment and constitution of committee of the whole House.**

A committee of the whole House consists of all the members of the House of Commons, and is appointed by the committal of a bill<sup>1</sup> and in pursuance of a resolution that the House will, either immediately or on a future day, resolve itself into a committee of the whole House.

<sup>1</sup> See further **PARLIAMENT** vol 34 (Reissue) PARA 768 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iii) Committee of the whole House and the Chairmen/939. When the Speaker leaves the chair without question put.

### **939. When the Speaker leaves the chair without question put.**

When the order of the day is read for the House of Commons to resolve itself into committee, the Speaker leaves the chair without question put unless, on going into committee on a bill, notice of an instruction to the committee has been given, when the Speaker remains in the chair until the instruction has been disposed of<sup>1</sup>.

<sup>1</sup> See HC Standing Orders (Public Business) (2009) no 66. In the House of Commons a general instruction is given to committees on public bills that they have power to make such amendments as they think fit, provided that they are relevant to the subject matter of the bill: see HC Standing Orders (Public Business) (2009) no 65. For the principles which guide and limit the system of instructions, both permissive and mandatory, see Erskine May's Parliamentary Practice (23rd Edn, 2004) ch 22.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iii) Committee of the whole House and the Chairmen/940. Chairman of Ways and Means.

### **940. Chairman of Ways and Means.**

Committees of the whole House are presided over by a member of the House of Commons, chosen by the House for that duty upon the motion of the Leader of the House or of some prominent member of the government<sup>1</sup>.

The member who is thus appointed is known as the Chairman of Ways and Means, and holds office for the duration of the Parliament<sup>2</sup>. In addition to taking the chair in the committee of the whole House, the Chairman of Ways and Means acts as Deputy Speaker, and when the unavoidable absence of the Speaker has been announced may exercise the authority and perform the duties of Speaker<sup>3</sup>.

1 For the procedure with regard to the transaction of business in committee of the whole House see **PARLIAMENT** vol 34 (Reissue) PARA 770 et seq.

2 The Chairman of Ways and Means receives a salary plus a further sum as a member. His salary, and those of the Deputy Chairmen, are voted annually in the Estimate for the House of Commons. He is a participating office holder for the purposes of the Parliamentary Contributory Pension Scheme, subject to his right to opt out: see PARA 926. As to his duties with regard to private bills see **PARLIAMENT** vol 34 (Reissue) PARA 876 et seq.

3 See the Deputy Speaker Act 1855 s 1; HC Standing Orders (Public Business) (2009) no 3(2). Every act done and proceeding taken in or by the House pursuant to any statute is as valid and effectual in those circumstances as if the Speaker himself were in the chair; and every act done, and warrant, order, certificate, notice or other document issued, signed or published in relation to any proceedings of the House of Commons by the Deputy Speaker has the same effect and validity as if it had been done, issued, signed or published by the Speaker for the time being: Deputy Speaker Act 1855 s 1. The Deputy Speaker may not appoint to any office except for the time he continues to be Deputy Speaker (s 2); and nothing in the 1855 Act affects the election of a Speaker or the forms of such an election or any prerogative of Her Majesty concerned therein or otherwise relating to the office of Speaker (s 3).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iii) Committee of the whole House and the Chairmen/941. Deputy Chairmen.

#### **941. Deputy Chairmen.**

At the commencement of every Parliament, or from time to time, as necessity may arise, the House may appoint two deputy chairmen of Ways and Means, known respectively as the first and the second Deputy Chairman of Ways and Means, and who are entitled to exercise all the powers vested in the Chairman of Ways and Means<sup>1</sup>, including his powers as Deputy Speaker<sup>2</sup>.

1 As to the Chairman of Ways and Means see PARA 940.

2 See HC Standing Orders (Public Business) (2009) no 2; and no 3(4). The Deputy Chairmen receive salaries plus further sums as members: see PARA 940 note 2. They are participating office holders for the purposes of the Parliamentary Contributory Pension Scheme, subject to their right to opt out: see PARA 926.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iii) Committee of the whole House and the Chairmen/942. Temporary chairmen.

#### **942. Temporary chairmen.**

In addition to the Chairman of Ways and Means<sup>1</sup> and the Deputy Chairmen<sup>2</sup>, the Speaker of the House of Commons<sup>3</sup> is directed to nominate not fewer than ten members at the beginning of every session, any one of whom may act as temporary chairman of any committee of the whole House upon the request of the Chairman of Ways and Means<sup>4</sup>.

1 As to the Chairman of Ways and Means see PARA 940.

2 As to the Deputy Chairman of Ways and Means see PARA 941.

3 As to the Speaker see PARAS 931-936.

4 See HC Standing Orders (Public Business) (2009) no 4(1); and 231 Commons Journals 55. Members so nominated, together with the Chairman and Deputy Chairman of Ways and Means constitute the Chairmen's panel: no 4(2). From this panel the chairmen of standing committees are appointed by the Speaker: HC

Standing Orders (Public Business) (2009) no 85(1). The Speaker may change the chairmen so appointed from time to time: no 85(2).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iv) Permanent Officers/943. Clerk of the House of Commons and Clerk Assistant.

#### **(iv) Permanent Officers**

##### **943. Clerk of the House of Commons and Clerk Assistant.**

The Clerk of the House of Commons is appointed by the Crown by letters patent to be Under Clerk of the Parliaments to attend upon the Commons<sup>1</sup>. He makes a statutory declaration<sup>2</sup> to make true entries, remembrances and journals of the things done and passed in the House<sup>3</sup>. He indorses all bills which are sent or returned to the House of Lords, carries messages between the two Houses, and lays certain papers on the table of the House of Commons. He signs addresses, votes of thanks and orders of the House; he has the custody of all records and documents and is responsible for the conduct of business in the department<sup>4</sup> under his control. He assists the Speaker of the House of Commons<sup>5</sup> and advises members on questions of order and the proceedings of the House. He puts the necessary questions on the adjournment of the House in the absence of the Speaker and his deputies or in the event of the Speaker's death. He is also the Accounting Officer of the House of Commons, Chairman of the Management Board<sup>6</sup> and the Corporate Officer of the House of Commons<sup>7</sup>. He is supported in his management role as chief executive of the House of Commons by the Office of the Chief Executive<sup>8</sup>.

The Clerk Assistant is appointed by the Crown under the royal sign manual<sup>9</sup> on the recommendation of the Speaker. The Clerk Assistant has particular responsibilities in connection with the committee of the whole House. He and the Principal Clerk of the Table Office assist the Clerk of the House in carrying out his duties in the chamber and for that purpose sit at the table of the House on the left-hand side of the Clerk<sup>10</sup>.

1 See 2 Hatsell's Precedents of Proceedings in the House of Commons (1818 Edn) 255.

2 He takes under the Promissory Oaths Act 1868: see s 12(4), (5); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 925.

3 As to the Votes and Proceedings, and journals of the House of Commons see PARAS 947-948.

4 The department of the Clerk of the House is divided into the following offices: the Table Office; the Legislation Service (comprising the Public Bill Office, the Private Bill Office, and the Delegated Legislation Office); the Journal Office; the Committee Office; the Overseas Office; the Legal Services Office; the Broadcasting Unit; the Vote Office; and the Parliamentary Office of Science and Technology: see House of Commons Factsheet G16: *The Clerk of the House* (October 2006). For detailed organisational charts see the House of Commons Commission Annual Report, available on the Parliament website accessible at the date at which this volume states the law at [www.parliament.co.uk](http://www.parliament.co.uk). Clerks are appointed, after nomination by the Clerk of the House, through the examination for administrative posts in the Civil Service. With the exception of the Clerk of the House and any Clerk Assistant, appointment is under the authority of the House of Commons Commission: see the House of Commons (Administration) Act 1978 ss 2(1), (4), 4(1)(a); and PARA 946.

5 As to the Speaker of the House of Commons see PARAS 931-936.

6 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 229; and R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 5-039.

7 See the Parliamentary Corporate Bodies Act 1992 s 2(2); and PARA 990.

8 See R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 5-039 et seq; and *Review of the Management and Services of the House of Commons* 25 June 2007 (HC Paper 685 (2006-07)).

9 House of Commons Offices Act 1856 s 1; and see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 230. There is also provision for the appointment of a Second Clerk Assistant: House of Commons Offices Act 1856 s 1. The Clerks Assistant are removable only by the Crown upon an address of the House of Commons for that purpose: s 1.

10 As to the Clerks Assistant see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 230.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iv) Permanent Officers/944. Serjeant at Arms.

#### **944. Serjeant at Arms.**

The Serjeant at Arms<sup>1</sup> is appointed by the Crown under a warrant and letters patent to attend upon Her Majesty's person when there is no Parliament; and, at the time of every Parliament, to attend upon the Speaker of the House of Commons<sup>2</sup>. She is supported by the Department of Committee and Chamber Services, and is the executive officer who carries out the rules of the House and the orders of the Speaker with regard to the maintenance of order in the House. She advises the Speaker directly on security matters, and arrests and holds in custody persons ordered to be imprisoned for breach of privilege<sup>3</sup>. The police on duty in the House are under her direction. As housekeeper of the House she has charge of all its committee rooms and other buildings<sup>4</sup>.

1 As to the Serjeant at Arms see generally Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 230-231.

2 After her appointment she is the servant of the House and may only be removed from office by the Crown upon an address from the House of Commons. As to prior consultations in the appointment see 666 HC Official Report (5th series), 8 November 1962, cols 1155-1156. As to the Speaker of the House of Commons see PARAS 931-936.

3 As to parliamentary privilege see PARA 1076 et seq.

4 As to the ownership and management of the Palace of Westminster see further PARAS 995-996.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(iv) Permanent Officers/945. Other officers of Parliament: Speaker's Counsel, Comptroller and Auditor General, and Parliamentary Commissioner for Administration.

#### **945. Other officers of Parliament: Speaker's Counsel, Comptroller and Auditor General, and Parliamentary Commissioner for Administration.**

The Counsel to the Speaker is appointed by the Speaker of the House of Commons<sup>1</sup>. In modern times his principal duties concern statutory instruments and he advises the Joint and Select Committees on Statutory Instruments<sup>2</sup> and the Regulatory Reform Committee<sup>3</sup>. He assists the Chairman of Ways and Means in relation to private legislation<sup>4</sup>, and he also has the general duty of advising the Speaker and officers of the House on legal questions arising in the course of public business or arising out of the affairs of the House<sup>5</sup>. A further Speaker's counsel,

similarly appointed, assists the House on questions of European Union law and advises the European Scrutiny Committee<sup>6</sup>.

The Comptroller and Auditor General is appointed by letters patent<sup>7</sup>. The Comptroller and Auditor General heads the National Audit Office (formerly the Exchequer and Audit Department)<sup>8</sup>. He assists the House of Commons by controlling the issue of money granted by Parliament from the Exchequer on the demand of the Treasury and by auditing the accounts of government departments and a wide range of public sector bodies<sup>9</sup>. Under the National Audit Act 1983 he examines economy, effectiveness and efficiency issues<sup>10</sup>.

The Parliamentary Commissioner for Administration (known as the Parliamentary Ombudsman) is appointed by letters patent and is removable only on an address from the two Houses of Parliament<sup>11</sup>. His function is to investigate complaints referred to him by members of the House of Commons from members of the public about alleged maladministration causing injustice in connection with actions taken by or on behalf of government departments or specific non-departmental public bodies<sup>12</sup>.

1 As to the Speaker of the House of Commons see PARAS 931-936.

2 See **PARLIAMENT** vol 34 (Reissue) PARA 946. As to joint committees see PARA 879 et seq; and as to select committees see PARA 979 et seq.

3 See **PARLIAMENT** vol 34 (Reissue) PARA 947.

4 As to the Chairman of Ways and Means see PARA 940. As to private legislation see **PARLIAMENT** vol 34 (Reissue) PARA 845 et seq.

5 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 231-232.

6 See HC Standing Orders (Public Business) (2009) no 143(3). As to the European Scrutiny Committee see PARA 989.

7 See the Exchequer and Audit Departments Act 1866 s 6 (amended by the Statute Law Revision Act 1893; and the Statute Law (Repeals) Act 1975). Her Majesty's power of appointment is exercisable on an address presented by the House of Commons, and no motion for such an address may be made except by the Prime Minister acting with the agreement of the Chairman of the Committee of Public Accounts: see the National Audit Act 1983 s 1(1). As to the Committee of Public Accounts see PARA 986.

The Comptroller and Auditor General is an officer of the House of Commons (s 1(2)); but this is not to be construed as applying any provision of the House of Commons (Administration) Act 1978 s 4 (see PARA 946) to the Comptroller and Auditor General, to the National Audit Office or to any member of its staff (National Audit Act 1983 s 1(4)). He is disqualified for membership of the House of Commons: see PARA 908. He is removable from office only on an address from both Houses of Parliament: see the Exchequer and Audit Departments Act 1866 s 3 (amended by the Statute Law Revision Act 1893; the House of Commons Disqualification Act 1957 s 14(1), Sch 4 Pt I; the Statute Law (Repeals) Act 1975; and SI 1999/118). See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

8 As to the National Audit Office see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 720-723.

9 As to his relation to the Committee of Public Accounts see PARA 986; and as to his duties generally in supervising expenditure see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq.

10 See the National Audit Act 1983 Pt II (ss 6-9); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 717.

11 As to the Parliamentary Commissioner for Administration see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

12 See the Parliamentary Commissioner Act 1967; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

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#### **946. The House of Commons Commission and House Departments.**

The House of Commons Commission<sup>1</sup>, which consists of the Speaker of the House of Commons<sup>2</sup>, the Leader of the House of Commons<sup>3</sup>, a member of the House nominated by the Leader of the Opposition<sup>4</sup> and three other<sup>5</sup> members appointed by the House<sup>6</sup>, appoints all staff in the House Departments<sup>7</sup> and determines conditions of service<sup>8</sup>.

The commission is also responsible for laying before the House an estimate of the use of resources<sup>9</sup> for the service of the House of Commons<sup>10</sup>.

1 The body of commissioners established under the House of Commons (Administration) Act 1978: s 1(1). The commission is a body corporate: s 1(5), Sch 1 para 1. The commission determines its own procedure (Sch 1 para 6(2)) and the validity of its proceedings is not affected by any vacancy among its members, or by any defect in the appointment or nomination of any commissioner (Sch 1 para 6(1)). The commission must report to the House as soon as possible after the end of each financial year on the exercise of its functions in that year and must cause the report to be printed: see s 1(3). See Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 236-239; R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 5-056 et seq.

A member of the commission, other than the Speaker and the Leader of the House of Commons (see notes 2-3), must vacate his office if he ceases to be a member of the Commons or if another person is nominated or appointed in his place: Sch 1 para 2(1), (5). Subject to that, such a member holds office for the duration of the Parliament in which he is nominated or appointed (Sch 1 para 2(2)) and on a dissolution of Parliament, continues in office until new members of the commission are nominated or appointed (see Sch 1 para 3(2)). Such a member may resign at any time by notice to the commission (Sch 1 para 2(3)); but past service is no bar to nomination or appointment as a member of the commission (Sch 1 para 2(4)). Where at any time after Parliament has been dissolved, it appears that such a member of the commission has not been validly nominated as a candidate at the ensuing general election, or, although so nominated, has not been elected a member of Parliament at that election, he must resign from the commission forthwith; and may resign in other circumstances: see Sch 1 para 3(2), (3). As to the Speaker continuing as a member of the commission until a new Speaker is chosen see PARA 931.

2 House of Commons (Administration) Act 1978 s 1(2)(a). The Speaker chairs the commission (see Sch 1 para 4) but the commission may appoint one of the commissioners to act as chairman at any meeting of the commission in the Speaker's absence: Sch 1 para 6(3). While the Speaker is temporarily absent from the House during a session of Parliament a Deputy Speaker may exercise his functions under these provisions, including any functions delegated to the Speaker under Sch 1 para 5 (see note 7), but an appointment made in exercise of functions so delegated is to be only for such time as the Deputy Speaker has such power to exercise the Speaker's functions: see s 5(3), Sch 2 para 2(1), (2). For these purposes, and for the purposes of the Employment Rights Act 1996 s 195 (see **EMPLOYMENT** vol 39 (2009) PARA 138), the Speaker at the time of a dissolution of Parliament is deemed to remain Speaker, and continues in office as a member of the commission, until a Speaker is chosen by the new Parliament: see the House of Commons (Administration) Act 1978 Sch 1 para 3(1), Sch 2 para 1 (amended by the Employment Rights Act 1996 s 240, Sch 1 para 14). As to the Speaker of the House of Commons see PARAS 931-936.

3 House of Commons (Administration) Act 1978 s 1(2)(b). 'Leader of the House of Commons' means the Minister of the Crown for the time being nominated as such by the Prime Minister: s 1(4).

4 House of Commons (Administration) Act 1978 s 1(2)(c). 'Leader of the Opposition' means the person who is the Leader of the Opposition in the House of Commons for the purposes of the Ministerial and other Salaries Act 1975 s 2: House of Commons (Administration) Act 1978 s 1(4). See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 219.

5 The other than a minister: see the House of Commons (Administration) Act 1978 s 1(2)(d).

6 House of Commons (Administration) Act 1978 s 1(2)(d).

7 See the House of Commons (Administration) Act 1978 s 4(1). The House of Commons Commission may increase or reduce the number of departments, allocate functions to them and make other arrangements in connection with those variations: see s 4(3). The current House Departments are: the Department of Chamber

& Committee Services, the Department of Facilities, the Department of Information Services, Resources, and the Department of Parliamentary ICT (which is a joint department with the House of Lords): see the *31st House of Commons Commission Annual Report* (HC Paper 912 (2008-09)).

8 See the House of Commons (Administration) Act 1978 s 2(1). Section 2(1) does not apply to the power to appoint, or the tenure of office of, the Clerk of the House of Commons, any Clerks Assistant, the Serjeant at Arms or the Speaker's personal staff: s 2(4). The commission must ensure that the complementing, grading and pay of staff in the House departments are kept broadly in line with those in the Civil Service and that, so far as consistent with the requirements of the House of Commons, the other conditions of service of staff in the House departments are also kept broadly in line with those in the Civil Service: s 2(2). The commission must also ensure that the pensions and other similar benefits of staff in or formerly in the House departments are kept in line with the provisions of the principal Civil Service pension scheme, as it applies for the time being to the home Civil Service, but need not do so in the case of staff for whom provision for such benefits was made under another scheme before they entered service in the House departments and continues to be so made in respect of such service: s 2(3). Persons employed in the House departments before the coming into force of s 2 must be treated as if their appointments had been made by the commission: Sch 2 para 3. The commission may delegate to the Speaker any of its functions under s 2 (Sch 1 para 5(1)) and may also delegate (1) to any person who is head of any House department, or to two or more of those persons jointly, any of its functions concerning staff in the House departments; (2) to the accounting officer, whether he is the head of any House department or not, any of its functions under s 2(2), (3) (Sch 1 para 5(2)); and anything done by or in relation to a person to whom functions are so delegated in the discharge of the commission's functions has the same effect as if done by or in relation to the commission (Sch 1 para 5(3)). Any such delegation, or amendment or revocation of such a delegation, must be mentioned in the report under s 1(3): Sch 1 para 5(4). Notwithstanding any such delegation, the commission retains the ultimate responsibility for considering representations made in relation to matters affecting the interest, in connection with their employment, of staff in the House departments by trade unions recognised by the commission in respect of those staff, and for the conduct of consultations and negotiations about such matters with those trade unions: Sch 1 para 5(5). The 'accounting officer' is the member of staff who may be appointed by the commission to be the officer responsible for the use of resources for the service of the House of Commons: see s 3(2) (substituted by the Government Resources Act 2000 s 29(1), Sch 1 para 17). 'Trade union' and 'recognised' have the same meanings as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see **EMPLOYMENT** vol 40 (2009) PARA 846; **EMPLOYMENT** vol 41 (2009) PARA 1043): House of Commons (Administration) Act 1978 s 5(6) (substituted by the Trade Union and Labour Relations (Consolidation) Act 1992 s 300(2), Sch 2 para 10).

The commission may extend the application of the provisions of the House of Commons (Administration) Act 1978 to any office or post which is not in a House department if the staff appointed are employed in or for the purposes of the House of Commons: see s 4(4), (5). Section 4(4) does not apply to the power to appoint, or the tenure of office of, the Speaker's personal staff: s 4(6).

9 le the expenditure, consumption or reduction in value of resources: House of Commons (Administration) Act 1978 s 3(5) (as substituted: see note 10).

10 See the House of Commons (Administration) Act 1978 s 3(1) (s 3 substituted by the Government Resources and Accounts Act 2000 Sch 1 para 17). All fees and other sums payable to the House of Commons must be paid into the Consolidated Fund: s 3(3) (as so substituted). However, the Commission may, subject to any relevant limit set by an Appropriation Act: (1) direct that resources to a specified value may be applied as an appropriation in aid of resources authorised by Parliament to be used for the service of a particular year; and (2) make provision similar to the Government Resources and Accounts Act 2000 s 2(3)-(5) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) about money received in connection with an appropriation in aid: House of Commons (Administration) Act 1978 s 3(4) (as so substituted).

As to the Consolidated Fund see PARA 1028. Statutory provisions relating to employment protection, sex discrimination and racial discrimination apply to the staff, with any necessary modifications, and also apply to House of Lords staff: see the Trade Union and Labour Relations (Consolidation) Act 1992 ss 277, 278; and **EMPLOYMENT** vol 39 (2009) PARA 137; **EMPLOYMENT** vol 40 (2009) PARA 850.

In 2000 the Commission established an Audit Committee chaired by the shadow leader of the House: see HC Paper 135 (2000-01). For a recent review of the management and services of the House of Commons see HC Paper 685 (2006-07).

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## (v) The Votes and Proceedings and Journals

## **947. The Votes and Proceedings.**

A record of the previous day's proceedings in the House of Commons is issued each morning during the session, under the title of 'The Votes and Proceedings'<sup>1</sup>. This record is compiled from the minute books kept by the clerks at the table, and is printed under the authority of the Speaker<sup>2</sup>.

1 The Votes and Proceedings of the House have been issued with some interruptions since the year 1680; they are distributed with the daily business papers of the House known collectively as 'the vote bundle', which includes the Summary Agenda and Order of Business and new notices of motions and amendments: see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 253-254.

2 Following privatisation of Her Majesty's Stationery Office in 1996, the Stationery Office Ltd prints the Votes and Proceedings: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 267. As to the Speaker of the House of Commons see PARAS 931-936.

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## **948. Journals.**

The journals are compiled in the Journal Office of the House of Commons from the Votes and Proceedings of the House, the minute books of the clerks and original papers laid before the House<sup>1</sup>. The journal of each session, together with an index, is issued as soon as possible after the session has been brought to a close, and is printed by a person licensed by the Speaker<sup>2</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 257. As to the Votes and Proceedings see PARA 947.

2 Following privatisation of Her Majesty's Stationery Office in 1996, the Stationery Office Ltd prints the Journals: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 267. The journals of the House of Commons, which date from 1547, have not been regarded as public records, but at the present time they are accepted as evidence in any court of law: see the Evidence Act 1845 s 3; and **CIVIL PROCEDURE** vol 11 (2009) PARA 890. When a cause is tried in London it is usual for an officer of the House to attend with a printed journal, if the leave of the House is obtained; if the trial is elsewhere, a party may either obtain from the Journal Office a copy of the entries required, without the signature of any officer and himself swear that it is a true copy or, with the permission of the House (or, during a recess, of the Speaker), he may secure the attendance of an officer to produce the printed journal, or extracts which he certifies to be true copies: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 258. As to the extent to which records of parliamentary debates and proceedings may be referred to in courts of law see PARA 1090. As to the Speaker of the House of Commons see PARAS 931-936.

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## **(vi) Procedure**

### **949. Quorum.**

There is no requirement of the presence of a quorum for the transaction of business in the House of Commons, and the House may not be counted at any time<sup>1</sup>. However, if fewer than 40 members take part in a division, the question is not decided and the business under consideration stands over until the next sitting of the House and the next business is taken<sup>2</sup>.

1 HC Standing Orders (Public Business) (2009) no 41(2).

2 HC Standing Orders (Public Business) (2009) no 41(1). See also Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 306-307. For the purpose of calculating the presence of 40 members, the occupant of the chair and the four tellers are counted. As to divisions see PARA 954.

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### **950. Matters decided on question.**

Every matter with regard to which the House of Commons or any committee of the House is called upon to give a decision is submitted to its judgment by means of a question put from the chair on a motion which has been made by some member of the House or of the committee<sup>1</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 381 et seq. As to the rules governing motions see PARA 951.

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### **951. Rules governing motions.**

As a general rule notice is required of every motion with regard to any matter upon which the House of Commons is asked to arrive at a decision<sup>1</sup>. A motion which is irregular or out of order may not be moved<sup>2</sup>. No motion or amendment requires to be seconded before the question on it is proposed from the chair; however, it is the practice of the Speaker on formal occasions, such as the debate on the address in reply to the Queen's Speech, to call on another member after the motion has been made, so giving an opportunity for seconding<sup>3</sup>. It is also the practice to second the motion proposing a member as Speaker.

1 For the rule and its exceptions see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 383. Previous notice of amendments is generally unnecessary but is usually given: see p 383. Notices of motions and amendments are circulated with the Votes and Proceedings: see PARA 947.

2 For the rules of order governing motions see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 381 et seq.

3 As to the Speaker of the House of Commons see PARAS 931-936. As to the Queen's Speech see PARA 1009 et seq.

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## 952. Closure of debate.

After a question has been proposed either in the House of Commons or in committee of the whole House, or in a general committee<sup>1</sup>, a member may rise in his place and claim to move 'That the question be now put', and, unless he is of opinion that it is an abuse of the rules of the House or an infringement of the rights of the minority, the Speaker or the chairman, as the case may be, immediately puts the question 'That the question be now put', which must be decided by the House or the committee without amendment or debate<sup>2</sup>. As soon as a motion of this kind has been carried, the question upon which it was moved is put from the chair, and, unless the assent of the Speaker or the chairman, as the case may be, is withheld, any further motion may be made which may be necessary to obtain the decision of the House or committee upon any question which has already been proposed from the chair<sup>3</sup>.

Before a question has been proposed a different form of closure may be moved to curtail what is seen as an over-long speech moving a motion or amendment at any stage of proceedings on a bill. In this case a member may rise to move 'that the question be now proposed', and the chair puts the question immediately unless he considers it to be an abuse of the rules of the House<sup>4</sup>. If a motion of this kind is carried the debate on the question now duly proposed takes place and that debate in its turn will be subject to the normal form of closure.

1 See HC Standing Orders (Public Business) (2009) no 89(3)(b). In the House itself a motion for the closure may be accepted by the Speaker or any of his deputies, but in a committee of the whole House, the order may be put in force only when the Chairman of Ways and Means or the Deputy Chairman (ie not a temporary chairman: see PARA 942) is in the chair: no 36(3). As to the Speaker of the House of Commons see PARAS 931-936. As to the Chairman of Ways and Means and the Deputy Chairman see PARAS 940-941. As to general committees see **PARLIAMENT** vol 34 (Reissue) PARAS 778-783.

2 See HC Standing Orders (Public Business) (2009) no 36(1). In the House, or in a committee of the whole House, a motion for the closure of debate can be decided in the affirmative only when it appears by the numbers declared from the chair, after a division has been taken, that not less than 100 members voted in the majority in support of the motion: see no 37. In a general committee the number of members required to vote in the majority depends upon the size of the committee: see no 89(1), (3)(b). As to divisions see PARA 954.

3 See HC Standing Orders (Public Business) (2009) no 36(2).

4 See HC Standing Orders (Public Business) (2009) no 29. As with closure under HC Standing Orders (Public Business) (2009) no 36, this provision is also subject to the condition that it can only be decided in the affirmative when not less than 100 members vote in the majority: see the HC Standing Orders (Public Business) (2009) no 37.

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## 953. Selection of amendments.

The Speaker of the House of Commons, or in committee the chairman or deputy chairman, or in general committee the chairman, has power in respect of any motion or bill under consideration to select the new clauses or amendments to be proposed<sup>1</sup>.

1 As to the rules and procedure see HC Standing Orders (Public Business) (2009) nos 32, 89(3)(a). To enable the Speaker or the chairman to form his opinion, he may ask a member who has given notice of an amendment to explain the object of the amendment: see no 32(3); and Erskine May's Parliamentary Practice (23rd Edn, 2004) p 461 et seq. As to the Speaker of the House of Commons see PARAS 931-936. As to general committees see **PARLIAMENT** vol 34 (Reissue) PARAS 778-783.

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#### **954. Divisions.**

When the decision of the Speaker of the House of Commons or the chairman as to the preponderance of voices upon a question which has been put from the chair is challenged, the Speaker or the chairman, as the case may be, immediately orders the lobbies to be cleared<sup>1</sup>. After an interval of not more than two minutes, he again puts the question<sup>2</sup>, and if his opinion is again challenged, and unless in his opinion a division is unnecessarily claimed<sup>3</sup>, he directs the 'ayes' to go into the right lobby and the 'noes' into the left, and nominates two tellers for each side<sup>4</sup>. The division then begins without any further delay. The members who take part in it pass through one or other of the lobbies, give their names to the clerks who sit at desks, and are counted by the tellers as they leave the respective lobbies<sup>5</sup>.

After at least eight minutes have elapsed since the order for clearing the lobbies, the Speaker orders the doors giving access to the lobby to be locked<sup>6</sup>. When all members who wish to record their votes have passed out of the two lobbies and been counted, the four tellers go to the table of the House and report the numbers of the division which are announced from the chair<sup>7</sup>.

1 See HC Standing Orders (Public Business) (2009) no 38(1). As to the Speaker of the House of Commons see PARAS 931-936.

2 HC Standing Orders (Public Business) (2009) no 38(2).

3 If the Speaker or the chairman is of opinion that a division has been unnecessarily claimed, he may take the vote of the House by calling upon the members who support his decision and those who challenge it to rise in their places. He must then either declare the determination of the House or committee if he thinks fit, or name tellers for a division: see HC Standing Orders (Public Business) (2009) no 40.

4 See HC Standing Orders (Public Business) (2009) no 38(2).

5 No member is obliged to vote (HC Standing Orders (Public Business) (2009) no 39(2)); and members may vote without having heard the question put (no 39(1)). If a member votes upon a matter in which he has a direct pecuniary interest his vote may be disallowed; 'direct pecuniary interest' is, however, narrowly interpreted, and a vote on a question of public policy has only once been disallowed: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 490 et seq. For the rules relating to declaration of interest see PARA 1069.

6 HC Standing Orders (Public Business) (2009) no 38(3).

7 Lists containing the names of the members and recording the manner in which they voted in all divisions are printed in the Official Report (Hansard) each day. As to other aspects of procedure relevant to divisions see Erskine May's Parliamentary Practice (23rd Edn, 2004) ch 17.

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#### **955. Vote of the Speaker or chairman.**

In the House of Commons the member who occupies the chair, either in the House itself or in committee, does not take part in a division<sup>1</sup>; but, in the event of any division resulting in a tie, the Speaker or the chairman, as the case may be, is required to give his vote<sup>2</sup>.

1 As to divisions see PARA 954.

2 When the Speaker has been called upon to record his vote, he has recorded it, if it has been possible, in such a manner as to give to the House a further opportunity of arriving at a decision in the matter with regard to which an equality of voting has occurred. If the Speaker or chairman gives reasons for his vote, they are entered in the journal. For further discussion of the principles which guide the Speaker in giving a casting vote see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 413 et seq; and R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) paras 6-084-6-085. As to the Speaker of the House of Commons see PARAS 931-936. As to the journal see PARA 948.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(vii) Maintenance of Order/956. Rules as to addressing the House of Commons.

## **(vii) Maintenance of Order**

### **956. Rules as to addressing the House of Commons.**

A member of the House of Commons who wishes to speak<sup>1</sup>, whether in the House itself or in a committee of the whole House or in a general committee, must rise in his place uncovered<sup>2</sup>. When his name has been called by the Speaker or the chairman<sup>3</sup>, as the case may be, he must address himself not to the House or to the committee, but to the Speaker or to the chairman<sup>4</sup>.

1 A member must speak in English, and is not allowed to read his speech: see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 424-425. The House has resolved that the use of Welsh should be permitted in parliamentary proceedings held in Wales subject to certain conditions: see 252 Commons Journals 390 (Resolution of the House of Commons of 5 June 1996). As to general committees see **PARLIAMENT** vol 34 (Reissue) PARAS 778-783.

2 When a member is so much incapacitated by illness that he cannot stand, it is customary for the House to give him leave to retain his seat while speaking.

3 When several members rise to address the House at the same time, it rests with the Speaker or the chairman, as the case may be, to decide which member he will call upon. As to the Speaker of the House of Commons see PARAS 931-936.

4 When a member speaks on a point of order in the House or in a committee of the whole House while a division is actually in progress, he does not rise in his place, but speaks sitting, and covered. As to divisions see PARA 954.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(vii) Maintenance of Order/957. Method of debate.

### **957. Method of debate.**

A debate is initiated by a member of the House of Commons proposing a motion. After the motion has been made it is proposed from the chair and is then open to debate. All speeches must be relevant to the proposition or to an amendment which the member speaking wishes to move. When an amendment has been moved it is likewise proposed from the chair. A debate is terminated by the question being put from the chair, unless the motion or amendment is, with the unanimous leave of the House, withdrawn by the member who moved it<sup>1</sup>.

<sup>1</sup> For methods of superseding a question under debate see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 394 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(vii) Maintenance of Order/958. Occasions when a second speech is permissible.

### **958. Occasions when a second speech is permissible.**

A member of the House of Commons is not allowed to speak upon the same question more than once in the same debate<sup>1</sup>, unless he has moved a substantive motion, when he is entitled to a right of reply<sup>2</sup>. A member who has already taken part in a debate may, by leave of the House, speak a second time on the same question if he wishes to explain some material point in his first speech which has been misunderstood, or desires to make a personal explanation.

<sup>1</sup> This rule does not apply when the House is in committee, nor does it apply to a member who is in charge of a bill reported from a standing committee, nor to a member proposing an amendment to such a bill: HC Standing Orders (Public Business) (2009) no 76. As to general committees see **PARLIAMENT** vol 34 (Reissue) PARAS 778-783.

<sup>2</sup> If, when an order of the day is read, the member responsible moves the motion formally without making a speech, he is entitled to address the House later in the debate. See also Erskine May's Parliamentary Practice (23rd Edn, 2004) p 429 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(vii) Maintenance of Order/959. Order in debate.

### **959. Order in debate.**

In the House of Commons strict rules are laid down for the maintenance of order in debate. These apply both to the content of speeches<sup>1</sup> and to the conduct of members present in the chamber while the House is sitting<sup>2</sup>. It is open to any member to call attention to the breach of one of these rules on a point of order and it is the duty of the chair to enforce their observance.

<sup>1</sup> The rules cover such matters as treasonable words, reflections on the monarch, personal allusions to other members and unparliamentary expressions: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 433 et seq; and Blackburn, Unparliamentary Language, 56 The Political Quarterly 396. Matters awaiting the adjudication of a court of law are not permitted to be raised in the House, subject always to the discretion of the chair and to the right of the House to legislate on any matter: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 436 et seq.

<sup>2</sup> Members are expected to remain reasonably silent while another member is speaking and avoid disturbing the member speaking by unruly interruptions: see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 6-086 et seq; and Erskine May's Parliamentary Practice (23rd Edn, 2004) p 444 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(4) CONDUCT OF BUSINESS/(vii) Maintenance of Order/960. Enforcement of order.

### **960. Enforcement of order.**

Whenever any member of the House of Commons is guilty of grossly disorderly conduct, the chair is empowered to order him to withdraw immediately from the House for the remainder of that day's sitting<sup>1</sup>.

If upon any occasion the Speaker, or the chairman if the House is in committee, considers that his power to order a member to withdraw is inadequate, he may name the member who has disregarded his authority or who has abused the rules of the House<sup>2</sup>. In such a case, if the offence has been committed in the House itself a motion is made for the offending member to be suspended from the service of the House, upon which the Speaker puts the question forthwith, as no amendment, adjournment or debate of a motion of this kind is allowed<sup>3</sup>. If the offence has been committed while the House is in committee of the whole House, the chairman immediately suspends the proceedings of the committee, the Speaker returns to the chair, and the chairman reports the circumstance to him. A motion is then made similar to that already described<sup>4</sup>.

If grave disorder arises, the Speaker may adjourn the House without question put or suspend any sitting for a time to be named by him<sup>5</sup>.

1 See HC Standing Orders (Public Business) (2009) no 43. The Serjeant at Arms is directed to carry out such orders as may be given to him from the chair: no 43. As to the power of the House to expel members see PARA 1100. As to the Serjeant at Arms see PARA 944.

2 HC Standing Orders (Public Business) (2009) no 43. As to the Speaker of the House of Commons see PARAS 931-936.

3 See HC Standing Orders (Public Business) (2009) nos 43, 44(1). Suspension continues in force on the first occasion until the fifth sitting day, and on the second occasion until the twentieth sitting day, on which the House sits after the day on which the suspension was ordered, but on any subsequent occasion until the House resolves that the suspension is to terminate: no 44(2). The first (or subsequent) occasion has been interpreted to mean the first or subsequent occasion in the same session. The termination of a session puts an end to the period of suspension. A member who is suspended must immediately leave the precincts of the House (no 45(1)); and, if he refuses to do so, the Speaker may call the attention of the House to his refusal, and he may then be forcibly ejected. A member who is thus ejected is suspended from the service of the House for the remainder of the session without further question put: see no 44(4). A member who has been suspended may continue to serve on any private bill committee to which he has been appointed at the time of his suspension: nos 45(2). If several members have jointly disregarded the authority of the chair, they may be named together, but otherwise not more than one member may be named at the same time: no 44(3). These provisions do not prevent the House proceeding against a member according to ancient usages: no 44(5). The salary of a member suspended may be withheld for the duration of the suspension: no 45A. As to members' salaries see PARA 915.

4 HC Standing Orders (Public Business) (2009) no 44(1).

5 See HC Standing Orders (Public Business) (2009) no 46.

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## **(5) ARRANGEMENT OF BUSINESS**

### **(i) Sittings of the House of Commons**

#### **961. Attendance and places of members.**

Members of the House of Commons are under a constitutional obligation to attend the sittings of the House, although their attendance is not enforced and no official record is kept of it<sup>1</sup>. No

member is entitled as of right to any particular seat in the House, but, by the custom and usage of the House, the front bench on the right of the Speaker's chair, which is known as the Treasury Bench, is always occupied by the members of the government, and the front bench on the opposite side of the table by the leading members of the official opposition<sup>2</sup>.

1 The duty of members to attend the House of Commons is laid down in 5 Ric 2 stat 2 c 4 (Summons to Parliament) (1382); and the absence of members, without the leave of the House or the licence of the Speaker, was formerly punished by loss of wages and other penalties. As to the Speaker of the House of Commons see PARAS 931-936.

2 For the manner in which a member may be permitted to secure a seat for himself at prayers until the rising of the House see 55 HC Official Report (6th series) col 21; 62 Official Report (3rd series) col 489; 252 Official Report (3rd series) col 1200; and Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 206-207.

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## **962. Meeting of the House of Commons.**

The House of Commons usually meets on five days a week throughout the session. Unless the House otherwise orders, the Speaker takes the chair at 2.30 pm on Mondays and Tuesdays, at 11.30 am on Wednesdays, at 10.30 am on Thursdays, and at 9.30 am on Fridays<sup>1</sup>. At the time appointed for the meeting of the House, the Speaker enters the chamber by the door below the bar, preceded by the Serjeant at Arms carrying the mace and accompanied by his chaplain<sup>2</sup>. Upon entering the House, the Speaker and the chaplain proceed to the table on which the mace is laid by the Serjeant at Arms. Prayers are then said by the chaplain, after which the Speaker takes his seat in the chair<sup>3</sup>.

1 See HC Standing Orders (Public Business) (2009) nos 9(1), 11(1). For sittings in Westminster Hall see PARA 978. As to the Speaker of the House of Commons see PARAS 931-936.

2 When the Speaker is unable to attend a meeting of the House the mace is laid on the table by the Serjeant at Arms and the Clerk of the House in his place at the table announces the fact of the Speaker's absence. The Chairman of Ways and Means, or, if the absence of the Chairman of Ways and Means has been announced, a Deputy Chairman, then proceeds to the table from behind the Speaker's chair and prayers are read. As to the Clerk of the House see PARA 943; as to the Serjeant at Arms see PARA 944; and as to the Chairman of Ways and Means and the Deputy Chairman see PARAS 940-941.

3 In the absence of the chaplain, prayers are read by the Speaker himself.

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## **963. Interruption of business.**

At 10 pm on Mondays and Thursdays, at 7 pm on Wednesdays, at 6 pm on Thursdays, and at 2.30 pm on Fridays, an interruption normally takes place in the business of the House of Commons, and any debate which happens to be in progress, or any proceedings upon which the House is engaged at the time, stands adjourned or lapses<sup>1</sup>. No opposed business unless

exempted may be taken after the interruption of business<sup>2</sup>, but at the moment of interruption the closure may be moved<sup>3</sup>.

1 See HC Standing Orders (Public Business) (2009) nos 9(3), 11(2). For the provisions as to exempted business see PARA 964. If a division is in progress at the due time for interruption, the interruption of business takes place after the result of the division is announced. As to divisions see PARA 954.

2 See HC Standing Orders (Public Business) (2009) nos 9(3), 11(2).

3 See HC Standing Orders (Public Business) (2009) nos 9(4), 11(2).

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#### **964. Exempted business.**

Standing orders exempt certain categories of business from lapsing at the moment of interruption<sup>1</sup>. Thus proceedings on a bill brought in on a ways and means resolution may be entered upon after the interruption of business even if opposed<sup>2</sup>. Such proceedings will not be interrupted and, if they are under discussion when the business is postponed under the provisions of any standing order, may be resumed, even if opposed, after the interruption of business<sup>3</sup>. There is a similar absence of restriction on debate on the consideration of petitions as to present personal grievances<sup>4</sup>.

Certain other classes of business may also be proceeded with, even if opposed, after the moment of interruption, or are exempt from interruption; but in each case it is provided that they may only be proceeded with for a certain length of time, or that proceedings on them must be decided forthwith<sup>5</sup>. Thus proceedings in pursuance of any Act of Parliament and proceedings on European Union documents are exempted business, save that the Speaker is directed to put any questions necessary to dispose of such business not later than one and a half hours after its commencement<sup>6</sup>.

For motions provided for by statute that have the effect of annulling statutory instruments or any other documents, proceedings may not continue beyond 11.30 pm on Mondays or Tuesdays, 8.30 pm on Wednesdays, or 7.30 pm on Thursdays<sup>7</sup>, unless the Speaker exercises his discretion in view of the lateness of the hour at which proceedings were entered upon<sup>8</sup>, or because of the importance of the subject matter<sup>9</sup>.

Proceedings on a motion authorising expenditure in connection with a bill are exempted business<sup>10</sup>, but any questions necessary to dispose of the proceedings must be put three-quarters of an hour after they were begun unless the motion is made at the same sitting as that at which the bill is read a second time, in which case the question is put forthwith<sup>11</sup>.

A motion by the member in charge of a bill to commit part of its proceedings to a public bill committee and part to a committee of the whole House may be made and decided after the moment of interruption, and the Speaker may permit one brief speech on each side of the question<sup>12</sup>.

In certain circumstances proceedings on a motion relating to the nomination or discharge of members to certain select committees may continue, provided that any questions necessary to dispose of the proceedings on such a motion must be put at 11 pm on Monday or Tuesday, 8 pm on Wednesday, or 7 pm on Thursday, or for one hour after the commencement of those proceedings, whichever is the later<sup>13</sup>.

Other business that may be decided after the moment of interruption, but without amendment or debate, includes a motion to suspend a member named by the chair<sup>14</sup>; a motion to commit a bill to a committee of the whole House or to a select committee, or a motion that it is expedient that a bill be committed to a joint committee of Lords and Commons, or a motion to give a public bill committee to which a bill has been committed power to send for persons, papers and records<sup>15</sup>; a motion relating to the reference of a bill to the Scottish Grand Committee and its subsequent committal to a Scottish public bill committee<sup>16</sup>; a motion relating to a statutory instrument reported upon by a Delegated Legislation Committee<sup>17</sup>; a motion, other than the first, on which a Finance Bill is to be introduced<sup>18</sup>; questions on second and third readings of Consolidated Fund or Appropriation Bills<sup>19</sup>; and a motion that the House sit in private<sup>20</sup>.

By means of a motion, not open to amendment or debate, made by a Minister of the Crown at the moment of interruption of business, the House may provide that specified business may be proceeded with at that day's sitting, even if opposed, until any hour<sup>21</sup>, or until a specified hour<sup>22</sup>, or until either a specified hour or the end of a specified period after it has been entered upon, whichever is the later<sup>23</sup>.

In recent years extensive resort has been made to motions agreed to one or more days beforehand, which have the effect of varying the application of standing orders to specific items of business on future days. Although such motions are themselves debatable they are almost invariably agreed to without debate.

- 1 As to the moment of interruption see PARA 963.
- 2 See HC Standing Orders (Public Business) (2009) nos 15(1)(a).
- 3 See HC Standing Orders (Public Business) (2009) nos 15(1)(a), (3). As to the procedure on private business see no 20 (and PARA 968); and as to the procedure on emergency motions see no 24(6) (and PARA 970).
- 4 See HC Standing Orders (Public Business) (2009) no 155. The presentation of petitions is not interrupted at the moment of interruption: see no 154(1), (2); and PARA 977.
- 5 See HC Standing Orders (Public Business) (2009) nos 15(1)(b).
- 6 See HC Standing Orders (Public Business) (2009) no 16. As to the Speaker of the House of Commons see PARAS 931-936.
- 7 See HC Standing Orders (Public Business) (2009) no 17(1), (4).
- 8 See HC Standing Orders (Public Business) (2009) no 17(2)(a).
- 9 See HC Standing Orders (Public Business) (2009) no 17(2)(b).
- 10 See HC Standing Orders (Public Business) (2009) no 52(2).
- 11 See HC Standing Orders (Public Business) (2009) no 52(1)(a), (b).
- 12 See HC Standing Orders (Public Business) (2009) no 63(2), (3). As to public bill committees see **PARLIAMENT** vol 34 (Reissue) PARAS 778-783.
- 13 See HC Standing Orders (Public Business) (2009) no 15(1)(c). As to select committees see PARAS 979-989.
- 14 See HC Standing Orders (Public Business) (2009) no 44(1); and PARA 960.
- 15 See HC Standing Orders (Public Business) (2009) no 63(2). As to joint committees see PARAS 879-881.
- 16 See HC Standing Orders (Public Business) (2009) no 97(2), (5).
- 17 See HC Standing Orders (Public Business) (2009) no 118(6).
- 18 See HC Standing Orders (Public Business) (2009) no 51(3).
- 19 See HC Standing Orders (Public Business) (2009) no 56.

- 20 See HC Standing Orders (Public Business) (2009) no 163(1).
- 21 See HC Standing Orders (Public Business) (2009) no 15(2)(a).
- 22 See HC Standing Orders (Public Business) (2009) no 15(2)(b).
- 23 See HC Standing Orders (Public Business) (2009) no 15(2)(c). Business begun before the moment of interruption may be interrupted and be permitted to continue by such a motion: no 15(3).

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### **965. Suspended sittings.**

Sittings of the House of Commons are occasionally informally suspended, for instance when no further business remains to be dealt with before business which, under standing orders, must be transacted at a specified time<sup>1</sup>. On rare occasions it has been necessary, under the standing order relating to grave disorder, for the Speaker to suspend the sitting for a short period<sup>2</sup>.

- 1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 304-305.
- 2 See HC Standing Orders (Public Business) (2009) no 46; and PARA 960.

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### **966. Adjournment of the House of Commons.**

When unopposed or exempted business has been concluded, a motion for the adjournment of the House of Commons is necessary to enable the House to rise<sup>1</sup>, and this motion can be debated until half an hour after it has been proposed. It is the present practice for the half hour to be used to enable debate on specific points raised by individual private members<sup>2</sup>. Unless the motion is previously agreed to, at the expiry of the half hour the House is adjourned by the Speaker without putting any question<sup>3</sup>. The Speaker then leaves the House by the door behind the chair, the mace being carried before him by the Serjeant at Arms<sup>4</sup>.

- 1 If business for the day is concluded before the moment of interruption, the House is adjourned on a motion agreed to by the House, such a motion being debatable: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 305.
- 2 Precedence for the subjects to be raised by private members is determined on four days of the week by ballot, and on one day as a result of selection by the Speaker. As to the Speaker of the House of Commons see PARAS 931-936.
- 3 See HC Standing Orders (Public Business) (2009) no 9(7) proviso.
- 4 As to the Serjeant at Arms see PARA 944.

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## **(ii) Business taken before the Commencement of Public Business**

### **967. Precedence.**

The precedence of business taken before the commencement of public business in the House of Commons is governed partly by standing orders and partly by practice<sup>1</sup>. The principal items of such business and the order in which they are taken are: (1) private business<sup>2</sup>; (2) questions and ministerial statements<sup>3</sup>; and (3) applications for leave to move the adjournment of the House for the purpose of discussing specific and important matters that should have urgent consideration<sup>4</sup>.

1 For a complete list of items of business see Erskine May's Parliamentary Practice (22nd Edn, 2004) pp 331-333.

2 See PARA 968.

3 See PARA 969.

4 See PARA 970.

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### **968. Private business.**

In the House of Commons no private business which has been opposed may be put down for Fridays<sup>1</sup>. On any sitting day, the consideration of private business is entered upon after the Speaker takes the chair; and on Mondays, Tuesdays, Wednesdays or Thursdays the time for private business must end not later than a quarter of an hour after the House sits, and any such business which has been entered upon but has not been disposed of by that hour must be deferred until such time as the Chairman of Ways and Means may appoint<sup>2</sup>. It is then taken either at the normal hour on any sitting day or, if opposition is persistent, at prescribed times laid down in the standing order, or as soon thereafter as any motion for adjournment<sup>3</sup> has been disposed of<sup>4</sup>.

1 See HC Standing Orders (Public Business) (2009) no 20(4).

2 See HC Standing Orders (Public Business) (2009) no 20(1). Business not reached stands over to the next sitting, or in the case of opposed business, the next sitting that is not a Friday: see no 20(1). As to the Speaker of the House of Commons see PARAS 931-936. As to the Chairman of Ways and Means see PARA 940.

3 I.e. any motion under HC Standing Orders (Public Business) (2009) no 24 (see PARA 970): no 20(6).

4 See HC Standing Orders (Public Business) (2009) no 20(5), (6).

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### **969. Questions and statements.**

On Mondays, Tuesdays, Wednesdays and Thursdays members of the House of Commons are called upon to address questions<sup>1</sup> of which they have given written notice<sup>2</sup> either to ministers with regard to matters connected with the government administration, or to members with regard to matters connected with the business of the House for which they are responsible<sup>3</sup>. Notices of questions are printed and sent out with the notice paper each day; unless a question is marked with an asterisk, the minister to whom it is addressed does not reply orally, but causes a printed answer to be sent out with the official report<sup>4</sup>.

No questions may be taken more than one hour after the House sits, except questions which have not appeared on the order paper but which are in the Speaker's opinion of an urgent character and relate either to matters of public importance or to the arrangement of business<sup>5</sup>.

When questions have been completed, statements may be made after prior notice to the Speaker by ministers regarding aspects of the government's domestic or foreign policy. As no question is before the House, debate on such statements is irregular. Such statements are also occasionally made at other times during the course of a sitting.

1 For the rules as to the form and content of questions see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 339 et seq. Generally, a question must either ask for information or press for action: HC Standing Orders (Public Business) (2009) no 22(3).

2 See HC Standing Orders (Public Business) (2009) no 22(1). As to the length of the notice which is required (ordinarily two days for a question for oral answer, or a named day for written answer) and other matters see HC Standing Orders (Public Business) (2009) no 22(2)-(6).

3 See HC Standing Orders (Public Business) (2009) no 21(1). In March 1997 the House passed a resolution relating to ministerial accountability to Parliament which referred to the duty of ministers to account, and be held to account, for the policies, decisions and actions of their departments and 'next steps' agencies: see Votes and Proceedings, 19 March 1997. As to ministerial responsibility generally, and the 'next steps' initiative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 416, 551.

4 See HC Standing Orders (Public Business) (2009) no 22(3), (4); and Erskine May's Parliamentary Practice (23rd Edn, 2004) p 340. As to the official report see PARA 1090.

5 See HC Standing Orders (Public Business) (2009) no 21(2). Questions tabled for written answer on a day when the House does not sit because of the continuance of a previous sitting appear on the order paper for the next sitting: see no 21(3). Questions which have not appeared on the order paper are termed 'urgent questions' (formerly 'private notice questions'), and may also be asked on a Friday at 11 am: see no 11(4); and Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 356-358. As to the Speaker of the House of Commons see PARAS 931-936.

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### **970. Motions for adjournment on urgent matters.**

Motions for the adjournment of the House of Commons to debate a specific and important matter that should have urgent consideration may only be made on one of the first four days of the week, after questions<sup>1</sup> and before public business<sup>2</sup>. A notice in writing of the matter

proposed must be supplied to the Speaker before noon on a Monday or Tuesday, 10.30 am on a Wednesday or 9.30 am on a Thursday, if the urgency of the matter is then known, or, if it is not, as soon afterwards as is practicable<sup>3</sup>. The Speaker indicates privately whether the application should be heard<sup>4</sup>; if the Speaker is satisfied that the application meets the basic criteria under the standing order, the member asks leave to move the adjournment in an application lasting not more than three minutes<sup>5</sup>.

If the Speaker considers the terms of the motion to be in order<sup>6</sup>, he asks whether the member has the leave of the House and, if such leave is not unanimously given, he calls on those members who support the motion to rise in their places<sup>7</sup>. If 40 or more members rise accordingly, or if fewer than 40 and not less than ten rise and the House gives leave on a division, the Speaker proceeds to announce either the time and length of the debate, which may not exceed three hours, or that he will make such a statement at a later hour during the sitting<sup>8</sup>. In such cases, business thus postponed becomes exempted from the provisions relating to sittings of the House<sup>9</sup> for a period equal to the duration of the proceedings on the adjournment motion<sup>10</sup>.

1 A new member is generally introduced and takes the oath after questions and before any such motion for adjournment: see HC Standing Orders (Public Business) (2009) no 6; and PARA 1003. As to questions see PARA 969.

2 See HC Standing Orders (Public Business) (2009) no 24(1). For recent occasions when such motions have been heard see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) paras 9-025 et seq, 10-030.

3 HC Standing Orders (Public Business) (2009) no 24(3). As to the Speaker of the House of Commons see PARAS 931-936.

4 If the Speaker so desires he may defer giving his decision on whether the matter is proper to be discussed until a named hour, when he may interrupt the proceedings of the House for the purpose: HC Standing Orders (Public Business) (2009) no 24(3).

5 HC Standing Orders (Public Business) (2009) no 24(3). The Speaker will have regard to the extent to which the matter to be debated concerns the administrative responsibilities of Ministers of the Crown or could come within the scope of ministerial action, and the probability of its being brought before the House in time by other means: see no 24(4). The Speaker must state whether or not he is satisfied that the matter is proper to be discussed without giving the reasons for his decision to the House: no 24(5).

6 For the rules of order, which are severe in their application, see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) ch 16.

7 See HC Standing Orders (Public Business) (2009) no 24(1).

8 See HC Standing Orders (Public Business) (2009) no 24(1), (2), (2A). Normally the motion stands over until the commencement of public business on the following day or, if a Thursday, on the following Monday; but in cases of exceptional urgency, it may be taken later the same day. As to divisions see PARA 954.

9 Ie HC Standing Orders (Public Business) (2009) no 9: see PARA 963.

10 See HC Standing Orders (Public Business) (2009) no 24(6).

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### **(iii) Public Business**

#### **971. Business taken at the commencement of public business.**

At the beginning of public business, before the consideration of the orders of the day and notices of motions, the House of Commons considers certain items 'at the commencement of public business'<sup>1</sup>. The items and the order in which they are taken are: (1) presentation of public bills<sup>2</sup>; (2) government motions regulating the business of the House<sup>3</sup>; and (3) motions for leave to bring in public bills or nominating select committees<sup>4</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 366 et seq.

2 See HC Standing Orders (Public Business) (2009) no 57. Proceedings under this standing order are purely formal and no debate is permitted.

3 See HC Standing Orders (Public Business) (2009) no 15(2); and PARA 964. If they comply with the provisions of no 15(2), such motions are not moved until the interruption of business: see no 15(3)-(6); and PARAS 963, 964.

4 See HC Standing Orders (Public Business) (2009) no 23. Such motions may be made by private members on Tuesdays and Wednesdays only. If the motion is opposed, the Speaker may permit a brief speech from the member who moves the motion and a member who opposes it; thereafter the question is put, or the debate adjourned: see no 23(1). Special provision is made for deferral to the following Monday of notices of such motions given for Budget day: see no 23(3). As to the Budget see PARAS 1050-1051. As to the Speaker of the House of Commons see PARAS 931-936. As to select committees see PARAS 979-989.

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## **972. Orders of the day and notices of motions.**

As soon as motions at the commencement of public business<sup>1</sup> in the House of Commons have been disposed of, the Speaker directs the Clerk of the House to read the orders of the day, without any question being put, or calls upon a member to move the first motion as the case may be<sup>2</sup>. The House considers the orders of the day and notices of motions<sup>3</sup> in the order in which they appear upon the order of business paper, the right being reserved to Her Majesty's Ministers of arranging government business, whether orders of the day or notices of motion, in such order as they think fit<sup>4</sup>.

1 See PARA 971.

2 See HC Standing Orders (Public Business) (2009) no 26. As to the Speaker of the House of Commons see PARAS 931-936. As to the Clerk of the House see PARA 943.

3 See PARA 930.

4 See HC Standing Orders (Public Business) (2009) no 27. The government effectively controls the business of the House: see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) ch 7. Government business has precedence at every sitting, except on 20 days when opposition business has precedence (see PARA 973) and 13 Fridays when private members' bills have precedence (see PARA 974): see HC Standing Orders (Public Business) (2009) no 14.

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## **973. Opposition days.**

Government business has precedence at every sitting of the House of Commons, save as is specifically provided<sup>1</sup>. In each session, 20 days are allotted for opposition business<sup>2</sup>. Of these, 17 are at the disposal of the Leader of the Opposition and three are at the disposal of the leader of the second largest opposition party<sup>3</sup>.

1 HC Standing Orders (Public Business) (2009) no 14(1). See also PARA 972 note 4.

2 HC Standing Orders (Public Business) (2009) no 14(2). Two Fridays are deemed equivalent to a single sitting on another day: see no 14(2)(a). A total of up to three opposition days may be taken as half days, on which proceedings either lapse at 7 pm on Monday or Tuesday, 4 pm on Wednesday, or 3 pm on Thursday, if not previously concluded, or are set down for consideration at the times specified above: see no 14(2)(b), (c).

3 HC Standing Orders (Public Business) (2009) no 14(2). As to the Leader of the Opposition see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 218-219. For these purposes, the second largest opposition party is defined as that party, not represented in the government, which has the second largest number of members elected to the House as members of that party: see no 14(3). By practice, the leader of the second largest opposition party commonly puts a portion of the three days at his disposal informally at the disposal of the other, smaller, opposition parties.

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#### **974. Private members' bills.**

Private members' bills have precedence over government business on 13 Fridays in each session<sup>1</sup>. At the beginning of each session, the House of Commons agrees to an order specifying which Fridays are to be allotted to private members' bills.

1 HC Standing Orders (Public Business) (2009) no 14(4). See also PARA 972 note 4. On the first seven Fridays, precedence is given to second readings in accordance with the result of a ballot. On subsequent Fridays, bills are arranged on the order paper in the following order: consideration of Lords amendments, third readings, consideration of reports not already entered upon, adjourned proceedings on consideration, bills in progress in committee, bills appointed for committee, and second readings: see no 14(5). Precedence among private members is decided by ballot: see no 14(6).

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#### **975. Government business.**

Apart from the provision made for opposition business and private members' bills<sup>1</sup>, the rest of the time of the session in the House of Commons is allotted to government business, and the government may distribute its business over that time as it thinks fit<sup>2</sup>. When government business has precedence, the orders of the day and notices of motions of the government are placed in sequence as determined by the government and before other business set down upon the order of business paper<sup>3</sup>.

'Government business' includes occasions when debate takes place on a motion for the adjournment of the House formally moved by a minister when the subject of debate has been chosen by a private member<sup>4</sup>, or, in the case of the three days allotted each session for the consideration of estimates, when the estimates selected for debate arise from a recommendation from the Liaison Committee<sup>5</sup>.

1 See HC Standing Orders (Public Business) (2009) no 14(1); and PARA 972 note 4. As to opposition days see PARA 973; and as to private members' bills see PARA 974.

2 Privilege motions have precedence over government business, whereas opposed private business set down by direction of the Chairman of Ways and Means (see PARA 968), and motions for adjournment on urgent matters (see PARA 970), are liable to interrupt the business of the day. By convention the government will usually afford time for certain other business: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 318. As to the Chairman of Ways and Means see PARA 940.

3 See PARA 972.

4 For a review of the opportunities for private members to raise subjects of their choice in adjournment debates in sittings of the House and in Westminster Hall (see PARA 978) see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) paras 8-058-8-060, 10-078; and Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 319-320. The subjects for such debates are chosen by ballot. As to debates on committee reports see PARA 983.

5 See HC Standing Orders (Public Business) (2009) nos 54(1)-(3), 145(2); and PARA 1043. As to the Liaison Committee see PARA 989.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(5) ARRANGEMENT OF BUSINESS/(iii) Public Business/976. Topical debates.

## 976. Topical debates.

Since 2007 the House has regularly considered by way of a 'topical debate' a specified matter of regional, national or international importance<sup>1</sup>. A minister of the Crown, normally the Leader of the House, selects the subject for the topical debate<sup>2</sup>.

A topical debate may not last for longer than one and a half hours, at which time the motion, unless previously disposed of, lapses<sup>3</sup>. The debate is opened by a minister of the Crown who, when called by the Speaker, may speak for up to ten minutes<sup>4</sup>. A member speaking on behalf of the Leader of the Opposition may then speak for up to ten minutes, either immediately following the minister at the start of the debate, or immediately before the minister at its conclusion<sup>5</sup>. A member nominated by the leader of the second largest opposition party may speak for up to six minutes either at the start of the debate or before the member speaking on behalf of the Leader of the Opposition or the minister, as the case may be, at its conclusion<sup>6</sup>. The Speaker may impose time limits on speeches by other members<sup>7</sup>.

1 This procedure was introduced following a recommendation by the Select Committee on Modernisation of the House of Commons: see *Revitalising the Chamber: the Role of the Backbencher* (HC Paper 337 (2006-07)). It has become normal practice for topical debates to take place weekly, usually on a Thursday, and for subjects to be announced by the Leader of the House after receiving suggestions from members.

2 See HC Standing Orders (Public Business) (2009) no 24A(1).

3 HC Standing Orders (Public Business) (2009) no 24A(2).

4 HC Standing Orders (Public Business) (2009) no 24A(3). Members speaking under no 24A(3)-(5), when speaking at the start of a debate, are permitted to speak for an extra minute for each intervention they accept up to the same number as the number of minutes allocated to them: no 24A(6). The Speaker may direct any member speaking under no 24A(3)-(5) to resume his seat when he has spoken for the period provided: no 24A(7).

5 HC Standing Orders (Public Business) (2009) no 24A(4). See also note 4.

6 HC Standing Orders (Public Business) (2009) no 24A(5). See also note 4.

7 HC Standing Orders (Public Business) (2009) no 24A(8). The time limits are imposed under no 47.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(5) ARRANGEMENT OF BUSINESS/(iii) Public Business/977. Public petitions.

### **977. Public petitions.**

A petition by a member or group of the public may be presented to the House, not directly but by a member of the House<sup>1</sup>. A member of the House is not obliged to present the petition<sup>2</sup> when requested to do so by a petitioner, and if he does, it is not to be assumed he agrees with the content of the petition<sup>3</sup>. The form of a petition must specifically address the House of Commons, indicate its origin and author(s), contain the reasons for the petition, and contain a clear request to the House which it is within the power of the House to grant<sup>4</sup>. Every person signing a petition must place his address after his signature<sup>5</sup>.

A member wishing formally to present a petition must sign it at the top of the first page, have it endorsed as being in order by the Journal Office, and give notice of his intention to present the petition within prescribed deadlines<sup>6</sup>. The member will then be called by the Speaker to present the petition immediately before the House of Commons enters upon the motion for the adjournment which terminates the sitting<sup>7</sup>.

A member who presents a public petition orally to the House must confine himself to a brief statement as to the parties from whom the petition comes, the number of signatures attached to it, and the material allegations contained in it, and he may read out the prayer<sup>8</sup>. The Speaker will not allow any debate, or any member to speak upon or in relation to the petition<sup>9</sup>. In exceptional circumstances, discussion of a petition relating to a present personal grievance for which there may be an urgent necessity for providing an immediate remedy may be brought into discussion, and if so, proceedings may be proceeded with, though opposed, to any hour<sup>10</sup>. A petition is then brought to the table by direction of the Speaker, and will be recorded in the votes and proceedings of the day.

Alternatively, a petition may be informally presented to the House, by a member duly signing it, and placing it in the petition bag kept at the back of the Speaker's chair<sup>11</sup>.

The text of a petition (except those relating to present personal grievances) is published in the Official Reports and sent to the government department concerned, whose relevant minister will respond in the form of an observation also printed in the Official Reports and sent to the member who presented the petition<sup>12</sup>.

1 For provision with regard to the presentation of public petitions see HC Standing Orders (Public Business) (2009) nos 154-157.

2 A member may not be compelled to present a public petition: *Chaffers v Goldsmid* [1894] 1 QB 186, DC. A member may not present a petition until he has taken the oath: *Bradlaugh's Case* (1882) 137 Commons Journals 295. The only other persons entitled to present public petitions personally to the House are the official representatives of the Corporation of London, who present their petitions at the bar of the House. The right was formerly also exercised by the Corporation of Dublin, but it seems doubtful whether the right still exists.

3 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 937.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 933.

5 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 934.

6 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 937.

7 See HC Standing Orders (Public Business) (2009) no 154(1). Such proceedings are not interrupted at the moment of interruption: no 154(2). As to the moment of interruption see PARA 963.

- 8 See HC Standing Orders (Public Business) (2009) no 153.
- 9 HC Standing Orders (Public Business) (2009) no 154(3).
- 10 See HC Standing Orders (Public Business) (2009) no 155.
- 11 Erskine May's Parliamentary Practice (23rd Edn, 2004) p 940.
- 12 See HC Standing Orders (Public Business) (2009) no 156.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(5) ARRANGEMENT OF BUSINESS/(iii) Public Business/978. Sittings in Westminster Hall.

### **978. Sittings in Westminster Hall.**

Since 1999 parallel sittings of the House of Commons have taken place in Westminster Hall<sup>1</sup> as a means of providing additional time for debate, particularly for private members motions and the consideration of select committee reports<sup>2</sup>. These sittings are procedurally the same as sittings of the House<sup>3</sup>, and any member can attend and take part<sup>4</sup>. The quorum for a sitting is three<sup>5</sup>.

Sittings take place on Tuesdays between 9.30 am and 2 pm; on Wednesdays between 9.30 am and 11.30 am and then at 2.30 pm for up to two and a half hours; and on Thursdays at 2.30 pm for up to three hours<sup>6</sup>. The Chairman of Ways and Means or a Deputy Chairman takes the chair in Westminster Hall<sup>7</sup>.

On Tuesdays and Wednesdays the business taken at any sitting is usually on backbench subjects chosen by ballot, on two thirds of Thursdays each session select committee reports chosen by the Liaison Committee are debated, and otherwise general subjects chosen by the government are debated<sup>8</sup>. Business is normally debated on an adjournment motion, and unless a question for adjournment has previously been agreed to the Deputy Speaker adjourns each sitting without putting any question<sup>9</sup>.

1 The sittings are in fact held in the Grand Committee Room off Westminster Hall.

2 The Westminster Hall sittings were established following recommendations made by the Select Committee on Modernisation of the House of Commons (see the *First Report* (HC Paper 60 (1998-99)), *Second Report* (HC Paper 194 (1998-99))) and by Sessional Order on 24 May 1999 (see 255 Commons Journal 343-45). See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) p 309 et seq.

3 However, certain standing orders on rules of debate, divisions, and order in the House, do not apply to Westminster Hall sittings, as follows: HC Standing Orders (Public Business) (2009) no 29 (powers of chair to propose question), no 36 (closure of debate), no 37 (majority for closure or for proposal of question), no 38 (procedure on divisions), no 39 (voting), no 40 (division unnecessarily claimed), no 41 (quorum), no 43 (disorderly conduct), no 44 (order in debate), no 45 (members suspended, etc, to withdraw from precincts), no 45A (suspension of salary of members suspended) and no 163 (motions to sit in private): no 10(12).

4 See HC Standing Orders (Public Business) (2009) no 10(2).

5 HC Standing Orders (Public Business) (2009) no 10(8).

6 See HC Standing Orders (Public Business) (2009) no 10(1). In calculating the given periods of time no account is taken of any period during which the sitting may be suspended owing to a division being called in the House or a committee of the whole House: no 10(1).

7 See HC Standing Orders (Public Business) (2009) no 10(4). In addition the House may appoint up to four other members of the Chairman's Panel to sit as Deputy Speaker: see no 10(4). Any member of the Chairmen's

Panel may also take the Chair when so requested by the Chairman of Ways and Means: see no 10(5). As to the Chairman of Ways and Means see PARA 940. As to the Chairmen's Panel see PARA 942 note 4.

8 The business is determined by the Chairman of Ways and Means and may include oral answers to questions under arrangements made by him, subject to the exception that the Thursdays set aside for debates on select committee reports are chosen by the Speaker: see HC Standing Orders (Public Business) (2009) no 10(3), (13).

9 See HC Standing Orders (Public Business) (2009) 10(11). Proceedings on any business which has been entered upon but not disposed of lapse: no 10(11). As to the business of Westminster Hall see further no 10(6)-(7), (9)-(10).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(6) SELECT COMMITTEES/(i) Appointment and Procedure/979. Appointment and nomination.

## **(6) SELECT COMMITTEES**

### **(i) Appointment and Procedure**

#### **979. Appointment and nomination.**

Select committees<sup>1</sup> are appointed by the House of Commons to consider or inquire into public matters or bills<sup>2</sup>. The members of such committees are usually nominated by the House<sup>3</sup>. In the case of select committees related to government departments and domestic committees, nomination by the House takes place on a motion made on behalf of the Committee of Selection, of which notice must have been given at least two sitting days previously<sup>4</sup>.

1 As to public bill committees see **PARLIAMENT** vol 34 (Reissue) PARAS 778-783; as to committees on private legislation see **PARLIAMENT** vol 34 (Reissue) PARA 889 et seq; and as to joint committees see PARAS 879-881. As to the working of select committees generally see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) ch 11.

2 Except as otherwise provided the quorum of a select committee is three or a quarter of the number of its members (fractions being counted as one), whichever is the greater: see HC Standing Orders (Public Business) (2009) no 124(1). For further provision as to quorum see no 124(2)-(4). If no quorum is fixed, all members of the committee must be present before business may be transacted.

3 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 739-741.

4 See HC Standing Orders (Public Business) (2009) no 121(2). In the case of select committees on hybrid bills (see PARA 985) it is usual for the members to be nominated partly by the House and partly by the Committee of Selection. As to domestic committees, and the Committee of Selection, see PARA 989.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(6) SELECT COMMITTEES/(i) Appointment and Procedure/980. Powers of select committees.

#### **980. Powers of select committees.**

A select committee of the House of Commons chooses its own chairman<sup>1</sup> and is almost invariably given power by the House to send for persons, papers and records, which enables it to summon and examine witnesses<sup>2</sup>. A select committee has power to administer an oath to witnesses examined before it<sup>3</sup>. It may continue to sit while the House itself is sitting but may

not otherwise sit during an adjournment without leave of the House<sup>4</sup>. Counsel may only be heard before a select committee by order of the House<sup>5</sup>. A select committee has power to authorise the release of copies of its report to civil servants, witnesses and lobby journalists not more than 72 hours in advance of publication<sup>6</sup>. A select committee having power to send for persons, papers and records publish the names of persons who have appeared as witnesses before them and to authorise the publication of written evidence submitted by them<sup>7</sup>. Select committees are also empowered to work with other committees<sup>8</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 747-749. The chairman only votes when there is an equality of voices in the committee.

2 If any witness who has been summoned to appear before a select committee refuses to attend, the fact is reported to the House and an order made for his attendance at the bar: see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 758-759. Failure to comply with this order may be treated by the House as a contempt: see PARA 1097 et seq. As to protection of witnesses see PARA 1088.

3 Parliamentary Witnesses Oaths Act 1871 s 1. In practice, oaths are infrequently administered. In 1997 the House passed a resolution relating to ministerial accountability to Parliament which stated that ministers should give accurate and truthful information to Parliament and that they should require civil servants giving evidence on their behalf to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code (June 2006): see Votes and Proceedings, 19 March 1997; 272 HC Official Report (6th series) col 1047. As to ministerial responsibility generally, and as to the Civil Service Code, see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 416, 554.

4 See HC Standing Orders (Public Business) (2009) no 123.

5 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 763. Specific provision is made to this effect in relation to the House of Lords: see PARA 877.

6 See HC Standing Orders (Public Business) (2009) no 134. As to reports see PARA 982.

7 HC Standing Orders (Public Business) (2009) no 135(1). The Speaker may authorise such publication in the case of a select committee which is no longer in existence: no 135(2).

8 See HC Standing Orders (Public Business) (2009) no 137A.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(6) SELECT COMMITTEES/(i) Appointment and Procedure/981. Procedure.

## **981. Procedure.**

Select committees are regarded as parts of the House of Commons, limited in their inquiries by the extent of the authority given them in their order of reference but mainly governed by the same rules as those which prevail in the House itself<sup>1</sup>. The presence of strangers may be authorised by a committee, and is normally authorised during the examination of witnesses<sup>2</sup>. Whenever strangers are admitted, proceedings may be broadcast unless the orders of reference of the committee provide otherwise<sup>3</sup>. During the deliberations of a committee, strangers are invariably excluded.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 746.

2 See HC Standing Orders (Public Business) (2009) no 125(1). A sub-committee appointed by a select committee has like powers except as the committee otherwise directs: no 125(2).

3 The Committee on Standards and Privileges, for example, has power to refuse to allow proceedings to which the public are admitted to be broadcast: see HC Standing Orders (Public Business) (2009) no 149(8); and PARA 988. As to broadcasting see generally PARA 1064 et seq.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/3. The House of Commons/(6) Select Committees/(i) Appointment and Procedure/982. Reports.

## **982. Reports.**

Every select committee may report to the House its opinion and observations upon any matters referred to it for consideration, together with the evidence taken before it, and also to make a special report of any matters which it may think fit to bring to the notice of the House<sup>1</sup>. As soon as the hearing of evidence, if any, is concluded, the committee meets to consider the report. It is open to any of its members to prepare a draft report, and every such draft report is brought up by its author and read the first time. A motion is then made proposing that one of the reports, usually that which has been submitted by the chairman, be read a second time paragraph by paragraph. As soon as the committee has decided, if necessary by means of a division, which draft report it will take as the basis of its report, this draft report is taken into consideration paragraph by paragraph<sup>2</sup>. When the committee has finally agreed upon the terms of its report, the chairman is instructed to report accordingly to the House<sup>3</sup>. When evidence has been given in public before a select committee no complaint of privilege will be entertained on the ground that it has been published before having been reported to the House<sup>4</sup>.

1 See HC Standing Orders (Public Business) (2009) no 133.

2 Amendments may be made to any paragraph, and new paragraphs may be added.

3 As to reports generally see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 769 et seq.

4 See HC Standing Orders (Public Business) (2009) no 136. Committees have power to direct the printing of reports when the House stands adjourned for more than two days: see no 137. As to the release of copies of reports in advance of publication see PARA 980.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/3. The House of Commons/(6) Select Committees/(i) Appointment and Procedure/983. Debates on committee reports.

## **983. Debates on committee reports.**

Provision is made for select committee reports chosen by the Liaison Committee<sup>1</sup> to be debated in a sitting in Westminster Hall<sup>2</sup> on two thirds of sitting Thursdays appointed by the Speaker, for up to three hours<sup>3</sup>. The standing orders relating to consideration of estimates also effectively provide an opportunity for the House to debate matters arising from the reports of select committees on three further days each session<sup>4</sup>.

1 As to the Liaison Committee see PARA 989.

2 As to sittings in Westminster Hall see PARA 978.

3 HC Standing Orders (Public Business) (2009) nos 10(1)(c), (13), 145; PARA 978; and PARA 989. As to the Speaker of the House of Commons see PARAS 931-936.

4 See HC Standing Orders (Public Business) (2009) no 54; and see PARA 975. As to the estimates see PARA 1033 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(6) SELECT COMMITTEES/(ii) Select Committees on Bills/984. Select committees on public bills.

## (ii) Select Committees on Bills

### 984. Select committees on public bills.

A public bill may be referred to a select committee of the House of Commons, usually in order that evidence may be taken on the bill<sup>1</sup>. The bill itself constitutes the order of reference to the committee. When the evidence, if any, is completed the clauses of the bill are considered. The procedure with regard to the consideration of the bill is practically the same as that in committee of the whole House<sup>2</sup>. When the committee has gone through the bill, the chairman is instructed to report it to the House, with or without amendments as the case may be. The bill is then recommitted to a committee of the whole House. If the committee desires to inform the House of any matters relating to the bill, it makes a special report<sup>3</sup>. Consolidation bills, statute law revision bills and bills arising from the work of the law commissions are regularly considered by the Joint Committee on Consolidation etc Bills<sup>4</sup>.

Occasionally select committees to which bills have not been formally referred comment on the legislation or take evidence on aspects of it, but such activity has no formal effect on the legislation<sup>5</sup>.

A Select Committee may be established to consider and report on a draft public bill published by the government and laid before Parliament as a means of consulting parliamentary and public opinion on its content before formal presentation in similar or revised form as a government bill, usually in the following session<sup>6</sup>.

1 The quinquennial Armed Forces Bill (see **ARMED FORCES**) is regularly so referred.

2 See **PARLIAMENT** vol 34 (Reissue) PARA 770 et seq. As to select committees' consideration of public bills see generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 791-793. However, the chairman does not have the power of selecting amendments; nor may closure be moved.

3 If the committee considers that the bill should not be allowed to proceed, it reports it to the House without amendment, together with a special report. As to reports see PARAS 982-983.

4 See HC Standing Orders (Public Business) (2009) no 140; and **PARLIAMENT** vol 34 (Reissue) PARAS 843-844. Orders in Council which but for the provisions of the Northern Ireland Act 1974 would have been enacted by a consolidation or statute law revision bill are also considered by this committee. As to the Joint Committee on Consolidation etc Bills see PARA 989. As to joint committees see PARAS 879-881.

5 See 70 Official Report (4th series) cols 406-407. For examples of a committee commenting on current legislation see eg *Fourth Report from the Transport Committee* (HC Paper 344 (1980-81)); *Second Report from the Transport Committee* (HC Paper 38 (1984-1985)).

6 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 791. For an example of a select committee on a draft public bill see the *Report of the Joint Committee on the Draft Constitutional Renewal Bill* (HC Paper 551 (2007-08)).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(6) SELECT COMMITTEES/(ii) Select Committees on Bills/985. Select committees on other bills.

## 985. Select committees on other bills.

Hybrid bills<sup>1</sup> are referred to a select committee only if petitions have been presented against the bill by a certain date<sup>2</sup>. Both private and provisional order bills have occasionally been referred to a select committee. The procedure in such cases is akin to that of a private bill committee<sup>3</sup>.

1 As to hybrid bills see **PARLIAMENT** vol 34 (Reissue) PARA 839.

2 The practice follows the recommendations of the Select Committee on Hybrid Bills (Procedure in Committee): see HC Paper 191 (1947-48).

3 See **PARLIAMENT** vol 34 (Reissue) PARAS 892-900; and Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 644-647.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(6) SELECT COMMITTEES/(iii) Select Committees on Matters/986. Committee of Public Accounts.

### (iii) Select Committees on Matters

#### 986. Committee of Public Accounts.

In compliance with a standing order of the House of Commons, the Committee of Public Accounts is appointed for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure and of such other accounts laid before Parliament as the committee may think fit<sup>1</sup>. The committee has power to send for persons, papers and records, to report from time to time during the session and to adjourn from place to place<sup>2</sup>.

Meetings of the committee are attended by the Comptroller and Auditor General<sup>3</sup>, whose reports regarding the applications and appropriations of parliamentary grants form the basis of the work of the committee. The main work of the committee has been the examination of reports made by the Comptroller and Auditor General on his studies of how government departments and other bodies have used their resources to further their objectives<sup>4</sup>. About two-thirds of these reports<sup>5</sup> are taken up by the committee, either by taking oral evidence or occasionally by sending written questions to the government departments concerned<sup>6</sup>.

The committee examines accounts for the previous financial year and the causes which have led any department to exceed the money granted to it by Parliament and makes recommendations for the elimination of waste and the encouragement of sound practices in financial administration. Its interest is not in the merits of policy objectives, but in whether policy is carried out efficiently, effectively and economically<sup>7</sup>.

1 HC Standing Orders (Public Business) (2009) no 148(1). The committee consists of not more than 16 members nominated by the House, of whom four form a quorum: no 148(1). Unless the House otherwise orders, each member nominated to the committee continues to be a member of it for the remainder of the Parliament: no 148(2). The committee was appointed for the first time in 1861.

2 HC Standing Orders (Public Business) (2009) no 148(1).

3 See PARA 945.

4 As to the work of the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 716 et seq.

5 Of which there are about 60 a year.

6 For a review of the work of the committee see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 11-060.

7 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 784-785.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(6) SELECT COMMITTEES/(iii) Select Committees on Matters/987. Select committees related to government departments.

### **987. Select committees related to government departments.**

Since 1979 a range of House of Commons select committees has been appointed by standing order to examine the expenditure, administration and policy of principal government departments and the public bodies associated with them<sup>1</sup>. Most committees have 11 members but several have 14, and the Northern Ireland Affairs Committee has 13<sup>2</sup>. Generally a quorum is three or, if greater, a quarter of the number of its members<sup>3</sup>. Each such committee has power to appoint sub-committees<sup>4</sup>.

The committees have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House of Commons; to adjourn from place to place; and to report from time to time<sup>5</sup>. They may appoint persons as specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within their order of reference<sup>6</sup>. They may meet concurrently with any other such committee, in order to deliberate, take evidence or consider draft reports<sup>7</sup>.

1 HC Standing Orders (Public Business) (2009) no 152(1). The various committees and the principal government departments concerned are: (1) Business and Enterprise; (2) Children, Schools and Families; (3) Communities and Local Government; (4) Culture, Media and Sport; (5) Defence; (6) Energy and Climate Change; (7) Environment, Food and Rural Affairs; (8) Foreign Affairs; (9) Health; (10) Home Affairs; (11) Innovation, Universities, Science and Skills; (12) International Development; (13) Justice; (14) Northern Ireland Affairs; (15) Scottish Affairs; (16) Transport; (17) Treasury; (18) Welsh Affairs; and (19) Work and Pensions: HC Standing Orders (Public Business) (2009) no 152(2).

2 See HC Standing Orders (Public Business) (2009) no 152(2). As to the appointment of members see no 121; and PARA 979.

3 HC Standing Orders (Public Business) (2009) no 124. In calculating a quarter of members, factions count as one.

4 HC Standing Orders (Public Business) (2009) No 152(3). Such sub-committees appointed have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, to report from time to time their formal minutes, and have a quorum of three: see no 152(4). A committee may report from time to time the evidence taken and the formal minutes of sub-committees: no 152(4)(c).

5 HC Standing Orders (Public Business) (2009) no 152(4)(a).

6 HC Standing Orders (Public Business) (2009) no 152(4)(b).

7 See HC Standing Orders (Public Business) (2009) no 137A.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/3. THE HOUSE OF COMMONS/(6) SELECT COMMITTEES/(iii) Select Committees on Matters/988. Committee on Standards and Privileges.

### 988. Committee on Standards and Privileges.

A Committee of Privileges was appointed at the beginning of every session (with one brief interval<sup>1</sup>) from the seventeenth century until 1996. Its work is now carried on by the Committee on Standards and Privileges<sup>2</sup>, whose aims are:

- 50 (1) to consider specific matters relating to privileges referred to it by the House of Commons<sup>3</sup>;
- 51 (2) to oversee the work of the Parliamentary Commissioner for Standards<sup>4</sup>;
- 52 (3) to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the register of members' financial interests<sup>5</sup> and any other registers of interests<sup>6</sup>;
- 53 (4) to review the form and content of those registers<sup>7</sup>;
- 54 (5) to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner<sup>8</sup>;
- 55 (6) to consider any matter relating to the conduct of members of the House, including specific complaints<sup>9</sup> which have been drawn to the committee's attention by the commissioner<sup>10</sup>; and
- 56 (7) to recommend any modifications to any code of conduct as may from time to time appear to be necessary<sup>11</sup>.

The committee consists of ten members, of whom five form a quorum<sup>12</sup>. It has power to appoint sub-committees of not more than seven members, of whom three form a quorum<sup>13</sup>. The committee and any of its sub-committees have power to send for persons, papers and records, to sit notwithstanding the adjournment of the House, to adjourn from place to place, report from time to time, and to appoint legal and other specialist advisers<sup>14</sup>. It is given the specific powers, with its sub-committees, to order the attendance of any member of the House and to require members to produce documents or records relating to its inquiries<sup>15</sup>, and to refer to unreported evidence of former Committee of Privileges or of Select Committees on Members' Interests and to any documents circulated to any such committee<sup>16</sup>. The committee has power to refuse to allow proceedings to which the public are admitted to be broadcast<sup>17</sup>.

1 Between 1833 and 1837. Ad hoc committees were also appointed on several occasions in the sixteenth century. As to the privileges of Parliament in general see PARA 1076 et seq.

2 See 251 Commons Journals 551-555; and HC Standing Orders (Public Business) (2009) no 149. As to conduct in the House of Commons see PARA 1069 et seq. The committee also effectively supersedes the previous select committee on members' interests.

3 HC Standing Orders (Public Business) (2009) no 149(1)(a).

4 See HC Standing Orders (Public Business) (2009) no 149(1)(b). As to the Parliamentary Commissioner for Standards see PARA 1073.

5 As to the register of members' financial interests see PARA 1069.

6 See HC Standing Orders (Public Business) (2009) no 149(1)(b).

7 See HC Standing Orders (Public Business) (2009) no 149(1)(b).

8 See HC Standing Orders (Public Business) (2009) no 149(1)(b).

- 9 le in relation to alleged breaches of any code of conduct to which the House of Commons has agreed: HC Standing Orders (Public Business) (2009) no 149(1)(c).
- 10 See HC Standing Orders (Public Business) (2009) no 149(1)(c).
- 11 See HC Standing Orders (Public Business) (2009) no 149(1)(c).
- 12 HC Standing Orders (Public Business) (2009) no 149(2). Certain officers, if they are members of the House, are enabled to attend the committee and to assist it: see no 149(9).
- 13 HC Standing Orders (Public Business) (2009) no 149(4).
- 14 See HC Standing Orders (Public Business) (2009) no 149(5).
- 15 See HC Standing Orders (Public Business) (2009) no 149(6).
- 16 See HC Standing Orders (Public Business) (2009) no 149(7).
- 17 HC Standing Orders (Public Business) (2009) no 149(8).

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### **989. Other committees appointed regularly.**

Other committees are appointed by means of permanent standing orders<sup>1</sup>. Several carry out functions of scrutiny and supervision on behalf of the House of Commons, as follows:

- 57 (1) the Joint Committee on Statutory Instruments<sup>2</sup>;
- 58 (2) the Regulatory Reform Committee<sup>3</sup>;
- 59 (3) the Select Committee on Public Administration<sup>4</sup>;
- 60 (4) the Joint Committee on Consolidation etc Bills<sup>5</sup>;
- 61 (5) the Joint Committee on Human Rights<sup>6</sup>;
- 62 (6) the Joint Committee on Tax Law Rewrite Bills<sup>7</sup>; and
- 63 (7) the Select Committee on European Scrutiny<sup>8</sup>.

Others relate to the administration and procedures of the House itself:

- 64 (a) the House of Commons Members Estimate Committee<sup>9</sup>;
- 65 (b) the Administration Committee<sup>10</sup>;
- 66 (c) the Finance and Services Committee<sup>11</sup>;
- 67 (d) the Liaison Committee<sup>12</sup>;
- 68 (e) the Procedure Committee<sup>13</sup>; and
- 69 (f) the Environmental Audit Committee<sup>14</sup>.

In addition, two select committees are appointed in accordance with private business standing orders, namely the Standing Orders Committee<sup>15</sup> and the Committee of Selection<sup>16</sup>.

While provision for all the committees mentioned above is contained in the standing orders of the House of Commons, select committees are also occasionally appointed with specific orders of reference and with a duration limited to the parliamentary session in which they are appointed<sup>17</sup>. Furthermore, committees are also occasionally appointed for the remainder of a parliament under a temporary standing order<sup>18</sup>. Provision is also made for the appointment of an Intelligence and Security Committee<sup>19</sup>.

- 1 As to standing, or public bill, committees see **PARLIAMENT** vol 34 (Reissue) PARAS 778-783.
- 2 See HC Standing Orders (Public Business) (2009) no 151. As to joint committees see PARAS 879-881.
- 3 See HC Standing Orders (Public Business) (2009) no 141. The committee considers draft orders laid before the House under the Legislative and Regulatory Reform Act 2006 ss 14, 18; any subordinate provisions order or draft of such an order made or proposed to be made under the Regulatory Reform Act 2001 ss 1, 4 (except those not made by a Minister of the Crown); any matter arising from its consideration of such orders or draft orders; and matters relating to regulatory reform: HC Standing Orders (Public Business) (2009) no 141(1)(i)-(iv).
- 4 See HC Standing Orders (Public Business) (2009) no 146. The committee is established to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England which are laid before the House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service: no 146(1). Until 1997 there had been two separate committees, one on the Parliamentary Commissioner for Administration and the other on public service, which were effectively merged on 8 July 1997 when the present committee was established.
- 5 See HC Standing Orders (Public Business) (2009) no 140. This committee considers consolidation bills, whether public or private; Statute Law Revision Bills; bills prepared pursuant to the Consolidation; bills to consolidate any enactments with amendments to give effect to recommendations made by one or both of the Law Commissions; bills prepared by one or both of the Law Commissions to promote the reform of the statute law by the repeal of certain enactments; and any other relevant Order in Council: no 140(1)(a)-(f). See further **PARLIAMENT** vol 34 (Reissue) PARAS 843-844.
- 6 See HC Standing Orders (Public Business) (2009) no 152B. The committee considers matters relating to human rights in the United Kingdom (excluding individual cases), proposals for remedial and draft remedial orders made under the Human Rights Act 1998 s 10, Sch 2 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): see no 152B(2).
- 7 See HC Standing Orders (Public Business) (2009) no 152C. The committee considers tax law rewrite bills, especially whether each bill committed to it preserves the effect of the existing law, subject to any minor changes which may be desirable: see no 152C.
- 8 See HC Standing Orders (Public Business) (2009) no 143. The committee is responsible for considering European Union documents, reporting on their legal and political importance, and making recommendations for their further consideration: see no 143. See further **PARLIAMENT** vol 34 (Reissue) PARA 807.
- 9 See HC Standing Orders (Public Business) (2009) no 152D. Having the same members as the House of Commons Commission, the committee's functions include responsibility to codify, keep under review, and modify where necessary, the provisions of the resolutions of the House and the guide to members' allowances known as *The Green Book* relating to expenditure charged to the Estimate for House of Commons: Members: see no 152D(3). Provision is also made for a Committee on Members' Allowances to advise the Members Estimate Committee, to approve practice notes to be used in administering members allowances, and to determine (subject to any appeal to the Members Estimate Committee) the application of the rules in such individual cases as may be referred to them by members: see HC Standing Orders (Public Business) (2009) no 152G. As to the House of Commons Commission see PARA 946. As to members' allowances see PARA 917 et seq.
- 10 See HC Standing Orders (Public Business) (2009) no 139. This committee considers the services provided for and by the House and makes recommendations thereon: see no 139(1). The committee was established in July 2005 to incorporate the work of the former committees on Accommodation and Works, Administration, Broadcasting, and Catering and Information. The current Administration Committee works closely with other domestic committees that consider the management of the House of Commons including the Finance and Services Committee, Members Estimate Committee, Joint Committee on Security, and Advisory Committee on Works of Art.
- 11 See HC Standing Orders (Public Business) (2009) no 144. The committee considers expenditure on and the administration of services for the House; prepares the estimates for the House; monitors the financial performance of the House Administration; and reports on the financial and administrative implications of recommendations made by the Administration Committee: no 144(1)(a)-(c). As to the estimates see PARA 1033 et seq.
- 12 See HC Standing Orders (Public Business) (2009) no 145. The committee considers general matters relating to the work of select committees, and gives such advice on this topic as may be sought by the House of Commons Commission; and reports to the House its choice of select committee reports to be debated on the relevant days: see no 145(1)(a)-(c). The committee may also hear evidence from the Prime Minister on matters

of public policy: see no 145(2). It consists principally of the chairmen of select committees. As to the House of Commons Commission see PARA 946; as to select committee reports see PARAS 982-983.

13 See HC Standing Orders (Public Business) (2009) no 147. The committee considers the practice and procedure of the House in the conduct of public business: see no 147(1).

14 See HC Standing Orders (Public Business) (2009) no 152A. The committee considers to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development, audits their performance against such targets as may be set for them by Her Majesty's Ministers, and reports thereon to the House: see no 152A(1).

15 See HC Standing Orders (Private Business) (2005) no 103; and **PARLIAMENT** vol 34 (Reissue) PARA 868.

16 See HC Standing Orders (Private Business) (2005) no 109; and **PARLIAMENT** vol 34 (Reissue) PARA 889.

17 Eg the Select Committee on Standards in Public Life in the 1994-95 session.

18 A recent prominent example is the Select Committee on Modernisation of the House of Commons, initially appointed on 4 June 1997 for the remainder of the Parliament. Following the 2001 and 2005 general elections, the committee was again similarly appointed for the duration of the Parliament. The committee consists of 15 members with a quorum of five, and has power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to report from time to time; and to appoint specialist advisers: see 295 HC Official Report (6th series) col 500. For discussion of the work of the committee see R Blackburn and A Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) paras 11-091, 13-012 et seq. Another example is the eight Regional Grand Committees established by temporary standing order agreed on 12 November 2008: see 482 HC Official Report (6th series) col 858.

19 See HC Standing Orders (Public Business) (2009) no 152E; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 475.

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## **4. PARLIAMENTARY PROPERTY**

### **(1) PROPERTY GENERALLY**

#### **(i) Property other than Copyright**

#### **990. The Corporate Officers of the House of Lords and the House of Commons.**

The Parliamentary Corporate Bodies Act 1992<sup>1</sup> creates two corporations sole<sup>2</sup>, the 'Corporate Officer of the House of Lords' and the 'Corporate Officer of the House of Commons', both having perpetual succession, an official seal and power to sue and be sued under their respective names<sup>3</sup>. The Corporate Officer of the Lords<sup>4</sup> in relation to the House of Lords and the Corporate Officer of the Commons<sup>5</sup> in relation to the House of Commons have the power:

- 70 (1) to acquire, hold, manage and dispose of land and any other property for any purpose of that House;
- 71 (2) to enter into contracts for any purpose of that House;
- 72 (3) to do any other thing which, in relation to the House of Lords, he can do by virtue of his office as Clerk of the Parliaments<sup>6</sup> or to do anything which he can do by virtue of his office as Under Clerk of the Parliaments<sup>7</sup>;
- 73 (4) to do anything reasonably necessary or expedient for, or incidental to, any of the above functions<sup>8</sup>.

Except in so far as Her Majesty may by Order in Council otherwise provide<sup>9</sup>, the Corporate Officers are not regarded as servants or agents of the Crown and do not enjoy any status, immunity or privilege of the Crown; and any property vested in them is not property of, or property held on behalf of, the Crown<sup>10</sup>.

1 The Parliamentary Corporate Bodies Act 1992 got over the difficulty, as respects the acquisition of property and entering into contracts etc, that because neither House of Parliament is a corporation it is doubtful whether either House has legal personality.

2 For the general law relating to corporations see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1101 et seq.

3 Parliamentary Corporate Bodies Act 1992 ss 1(1), 2(1). The Corporate Officers have the power to create joint departments of both Houses of Parliament: see PARA 991.

4 The Corporate Officer of the House of Lords is referred to as the 'Corporate Officer of the Lords': Parliamentary Corporate Bodies Act 1992 s 1(1). The individual who for the time being is by letters patent appointed as Clerk of the Parliaments is the Corporate Officer of the Lords: s 1(2). As to the Clerk of the Parliaments see PARA 855.

5 The Corporate Officer of the House of Commons is referred to as the 'Corporate Officer of the Commons': Parliamentary Corporate Bodies Act 1992 s 2(1). The individual who for the time being is by letters patent appointed as Under Clerk of the Parliaments (customarily referred to as the 'Clerk of the House of Commons') is the Corporate Officer of the Commons: s 2(2). As to the Under Clerk of the Parliaments see PARA 943.

6 See note 4.

7 See note 5.

8 Parliamentary Corporate Bodies Act 1992 ss 1(3), 2(3). As to the schemes which were made under these powers in 1992 see PARA 992.

During any vacancy in the office of the Clerk or the Under Clerk of the Parliaments, his functions may be exercised by the Clerk Assistant: ss 1(4), 2(4). The seal of the Corporate Officer of the Lords may be authenticated by the signature of, and any contract entered into by him may be signed by, the Clerk of the Parliaments, the Clerk Assistant, the Reading Clerk or any other House of Lords officer authorised by the Clerk of the Parliaments for that purpose: s 1(5). As to the Clerk Assistant and the Reading Clerk see PARA 856. The seal of the Corporate Officer of the Commons may be authenticated by the signature of, and any contract entered into by him may be signed by, the Under Clerk of the Parliaments, any Clerk Assistant or any other House of Commons officer authorised by the Under Clerk of the Parliaments for that purpose: s 2(5). As to the Clerk Assistant see PARA 943. As to the appointment of these officers see the Clerk of the Parliaments Act 1824 ss 2, 3; and PARAS 855, 856.

Any agreement entered into for any purpose of the Lords or the Commons by the Clerk or Under Clerk of the Parliaments respectively or any other officer of either House which was in force immediately before 16 March 1992 has effect as if made by the Corporate Officer of that House; and any reference to the Clerk or Under Clerk of the Parliaments or an officer of either House in any document incorporating or otherwise connected with such an agreement is to be construed as a reference to the Corporate Officer of the Lords or to the Corporate Officer of the Commons respectively: see the Parliamentary Corporate Bodies Act 1992 s 7(1)-(4).

9 Any statutory instrument made in the exercise of this power is subject to annulment in pursuance of a resolution of either House of Parliament: Parliamentary Corporate Bodies Act 1992 ss 1(7), 2(7). As to provision made under this power see the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732 (amended by SI 2006/1457).

10 Parliamentary Corporate Bodies Act 1992 ss 1(6), 2(6).

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## **991. Joint departments of the Houses of Parliament.**

The Corporate Officers<sup>1</sup> may establish joint departments<sup>2</sup> of the Houses of Parliament<sup>3</sup>, which have such functions as they may allocate from time to time<sup>4</sup>. The Corporate Officers may divide, amalgamate or abolish joint departments<sup>5</sup>, and their powers in connection with joint departments include power:

- 74 (1) to acquire, hold, manage and dispose of land and other property of any description<sup>6</sup>;
- 75 (2) to enter into contracts<sup>7</sup>;
- 76 (3) to do anything reasonably necessary or expedient for or incidental to their powers<sup>8</sup>.

The Corporate Officers' functions in connection with joint departments are exercisable by them only jointly<sup>9</sup>. When exercising functions under head (1) or (3), or head (2) if it changes the overall character of the services provided in the joint department, the Corporate Officer of the House of Commons may act only with the approval of the House of Commons Commission<sup>10</sup>, and the Corporate Officer of the House of Lords may act only in accordance with recommendations made by the House Committee of the House of Lords<sup>11</sup> and approved by that House<sup>12</sup>.

The staff of a joint department are appointed by the Corporate Officers and must be employed under a contract of employment with them<sup>13</sup>.

An enactment, whenever passed or made, applying in relation to persons employed under a contract of employment with the Corporate Officer of the House of Lords applies in the same way in relation to staff of a joint department<sup>14</sup>. In addition, for the purposes of any enactment, whenever passed or made, relating to either House of Parliament, anything done by or on behalf of a joint department or in relation to it is done by or on behalf of each House or in relation to each House (as the case may be)<sup>15</sup>.

1 'Corporate Officers' means the Corporate Officer of the House of Commons and the Corporate Officer of the House of Lords: Parliament (Joint Departments) Act 2007 s 1(5). As to those officers see PARA 990.

2 'Joint department' means a department established under the Parliament (Joint Departments) Act 2007 s 1: Parliament (Joint Departments) Act 2007 s 1(5).

3 Parliament (Joint Departments) Act 2007 s 1(1).

4 Parliament (Joint Departments) Act 2007 s 1(2).

5 Parliament (Joint Departments) Act 2007 s 1(3).

6 Parliament (Joint Departments) Act 2007 s 1(4)(a).

7 Parliament (Joint Departments) Act 2007 s 1(4)(b).

8 Parliament (Joint Departments) Act 2007 s 1(4)(c).

9 Parliament (Joint Departments) Act 2007 s 2(1).

10 Parliament (Joint Departments) Act 2007 s 2(2), (3)(a). As to the House of Commons Commission see PARA 946.

11 This reference to the House Committee includes a reference to any committee the House of Lords designates instead of that Committee for the purposes of this section: Parliament (Joint Departments) Act 2007 s 2(4). As to the House Committee of the House of Lords see PARA 889.

12 Parliament (Joint Departments) Act 2007 s 2(2), (3)(b).

13 Parliament (Joint Departments) Act 2007 s 3(1). The Corporate Officers must ensure (1) that the pay of staff is kept broadly in line with pay in the Home Civil Service; (2) that, so far as is consistent with the requirements of both Houses of Parliament, the other conditions of service of staff are kept broadly in line with

those in the Home Civil Service; and (3) that the pensions and similar benefits of existing and former staff are kept in line with the provisions of the principal Civil Service Pension Scheme, as it applies for the time being to the Home Civil Service: s 4(2). Head (3) does not apply to existing or former staff if provision for pensions and similar benefits was made for them under another scheme before they joined the joint department, and continues to be made under that scheme in respect of their service in that department: s 4(3).

Provision is also made for staff transfers: see s 4, Schedule. The Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (see **EMPLOYMENT** vol 39 (2009) PARA 111 et seq) apply to the Schedule: see Sch para 1(1).

14 Parliament (Joint Departments) Act 2007 s 5(1), (3).

15 Parliament (Joint Departments) Act 2007 s 5(2), (3).

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## **992. Ownership of property other than copyright.**

All property acquired for the purposes of either House of Parliament, other than copyright, is vested in the Corporate Officer of the House of Lords or the Corporate Officer of the House of Commons<sup>1</sup>, as the case may be, and any property acquired for the purposes of both Houses is vested in the two Corporate Officers jointly<sup>2</sup>.

1 As to the Corporate Officer of the House of Commons and the Corporate Officer of the House of Lords see PARA 990.

2 See the Parliamentary Corporate Bodies Act 1992 ss 1(3), 2(3); and PARA 990. Apart from the Palace of Westminster, all land and related property held for the purposes of either or both Houses before 1 April 1992 was vested in the Secretary of State for the Environment. On that day the Secretary of State's interest in all property held for the purposes of the House of Lords was transferred to the Corporate Officer of the House of Lords; his interest in all property held for the purposes of the House of Commons was transferred to the Corporate Officer of the House of Commons; and his interest in property held for the purposes of both Houses was transferred to the two Corporate Officers jointly. These transfers were effected by two schemes made on 27 March 1992 under s 3. The schemes are not statutory instruments and have not been published.

Section 3 gave the Secretary of State power to make schemes for the transfer to the Corporate Officers of the Houses of Parliament (either individually or jointly) of any property, rights and liabilities not relating to a person's employment (1) to which he, or Her Majesty in the case of copyright, was entitled or subject; and (2) which subsisted for the purposes of or in connection with or were otherwise attributable to the Crown service then known as the Parliamentary Works Office of the Department of the Environment: see s 3(1). A scheme made under s 3 is referred to as a 'transfer scheme'; and the 'transferee corporation' means, in relation to property, rights or liabilities transferred by a transfer scheme, the corporation to whom the scheme provides for them to be transferred: see s 3(2). A certificate issued by the Secretary of State that any property, rights or liabilities specified in the certificate subsisted as mentioned in s 3(1)(b) (see head (2)) is conclusive evidence of that fact for all purposes: see s 3(5)(a). Stamp duty was not chargeable upon a transfer scheme: see s 5(4). The provisions of the Stamp Act 1891 as to admissibility of evidence remain unaffected: see the Parliamentary Corporate Bodies Act 1992 s 5(5). See further **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1086. A transfer scheme might contain such supplementary, incidental, consequential or transitional provisions as appeared to the Secretary of State to be necessary or expedient and might revoke or vary any provision of an earlier transfer scheme: see s 5(1). Where, by reason of the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (see **EMPLOYMENT** vol 39 (2009) PARA 111 et seq), in relation to the transfer of any property, rights or liabilities by virtue of a transfer scheme, a person ceased to be employed in the Civil Service of the state and became employed by the transferee corporation (a) he was not, on so ceasing, to be treated for the purposes of any scheme under the Superannuation Act 1972 s 1 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 567 et seq) as having retired on redundancy; and (b) his ceasing to be employed in that service was not regarded as an occasion of redundancy for the purpose of the agreed redundancy procedures applicable to persons employed in that service: Parliamentary Corporate Bodies Act 1992 s 4.

A transfer scheme came into force on the day specified for that purpose in the scheme (the 'appointed day'); and property, rights and liabilities falling within a transfer scheme were transferred and vested, in accordance

with the scheme, on that day: see s 3(3), (4). A certificate issued by the Secretary of State that, by virtue of a transfer scheme, any property, rights or liabilities specified in the certificate have vested in the transferee corporation is conclusive evidence of that fact for all purposes: s 3(5)(b). Any agreement, transaction or other thing made, effected or done by or in relation to the Secretary of State, which related to any property, right or liability to be transferred under a scheme and which was effective prior to the appointed day, has effect on and after that day as if made, effected or done by, to or in relation to the transferee corporation; and any reference to the Secretary of State in any document incorporating or otherwise connected with such an agreement, transaction or other thing is, on and after the appointed day, to be construed as a reference to the transferee corporation: see s 5(2), (3). Although these provisions remain on the statute book, they are of a transitional nature only and no further schemes will be made under them.

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### **993. Gifts to either House of Parliament.**

Where, by will or otherwise, any property is expressed<sup>1</sup> to be given to the House of Lords or the House of Commons, the gift takes effect as a gift to the Corporate Officer of that House<sup>2</sup>.

1    le by whatever words used: see the Parliamentary Corporate Bodies Act 1992 s 6(1).

2    Parliamentary Corporate Bodies Act 1992 s 6(1), (2). As to the Corporate Officers see PARA 990.

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## **(ii) Copyright**

### **994. Ownership of copyright.**

Special provision is made for copyright<sup>1</sup> in relation to the Houses of Parliament by the Copyright, Designs and Patents Act 1988<sup>2</sup>. That Act creates a form of copyright known as 'parliamentary copyright' and it is the relevant House itself or the two Houses jointly, as the case may be, which owns or own such copyright<sup>3</sup>. For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, each House is treated as having the legal capacities of a body corporate, unaffected by a prorogation or dissolution<sup>4</sup>. The functions of the House of Commons as owner of copyright are exercised by the Speaker on behalf of the House<sup>5</sup>. The functions of the House of Lords as owner of copyright are exercised by the Clerk of the Parliaments on behalf of the House<sup>6</sup>.

Legal proceedings relating to copyright must be brought (1) by or against the Commons in the name of 'The Speaker of the House of Commons'; and (2) by or against the Lords in the name of 'The Clerk of the Parliaments'<sup>8</sup>.

1    Copyright is a property right which subsists in accordance with the Copyright, Designs and Patents Act 1988 Pt I (ss 1-179) in the following descriptions of work: (1) original literary, dramatic, musical or artistic works; (2) sound recordings, films, broadcasts or cable programmes; and (3) the typographical arrangement of published editions: see s 1(1); and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 57.

Copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings, or for the purposes of reporting such proceedings: s 45; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006

Reissue) PARA 365. On copyright affecting public and private bills, see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 265 et seq.

2 See the Copyright, Designs and Patents Act 1988 ss 165, 166, 167; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 150 et seq; and **STATUTES** vol 44(1) (Reissue) PARA 1206.

3 See the Copyright, Designs and Patents Act 1988 ss 165, 166; and **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARAS 150-152.

4 Copyright, Designs and Patents Act 1988 s 167(1). As to prorogation and dissolution see PARA 722 et seq.

5 Copyright, Designs and Patents Act 1988 s 167(2). If so authorised by the Speaker, or in the case of a vacancy in that office, the functions may be discharged by the Chairman of Ways and Means or a Deputy Chairman: s 167(2). For these purposes, a person who held any of those offices on the dissolution of Parliament may continue to act until the corresponding appointment is made in the next session of Parliament: see s 167(3). As to the Speaker of the House of Commons see PARAS 931-936. As to the Chairman of Ways and Means and the Deputy Chairmen see PARAS 940-941.

6 Copyright, Designs and Patents Act 1988 s 167(4). If so authorised by the Clerk of the Parliaments, or in the case of a vacancy in that office, the functions may be discharged by the Clerk Assistant or the Reading Clerk: s 167(4). As to the Clerk of the Parliaments, the Clerk Assistant and the Reading Clerk see PARAS 855-856.

7 Copyright, Designs and Patents Act 1988 s 167(5)(a).

8 Copyright, Designs and Patents Act 1988 s 167(5)(b).

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## **(2) PARLIAMENTARY PREMISES**

### **(i) Palace of Westminster**

#### **995. Ownership and management of the Palace.**

The Palace of Westminster ('the Palace'), where the two Houses of Parliament traditionally meet, is a royal palace and accordingly Crown land<sup>1</sup>. The Palace is managed by the Houses themselves<sup>2</sup>.

For the purposes of:

- 77 (1) the Town and Country Planning Act 1990<sup>3</sup>;
- 78 (2) the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>4</sup>;
- 79 (3) the Ancient Monuments and Archaeological Areas Act 1979<sup>5</sup>; and
- 80 (4) the Building Act 1984<sup>6</sup>,

to the extent that they have responsibility for the management of any property in which they do not have an interest but which forms part of the Palace, the Corporate Officers are to be regarded as having the status of a government department<sup>7</sup>.

1 See **CROWN PROPERTY**. For reviews of the management of the Houses, see eg the *Review of the Management and Services of the House of Commons* (HC Paper 685 (2006-07)); and the *Fourth Report of the Select Committee on the House of Lords' Offices* (HL Paper 79 (2001-02)).

2 The Palace of Westminster was formerly managed by the Secretary of State, under the Crown Lands Act 1851 s 21. However, that provision ceased to have effect in relation to the Palace on 1 April 1992:

Parliamentary Corporate Bodies Act 1992 s 7(5); Palace of Westminster (Appointed Day) Order 1992, SI 1992/902, art 2. The Parliamentary Corporate Bodies Act 1992 made no provision for the future management of the Palace, but by agreement with Her Majesty the two Houses assumed this role.

3 See the Town and Country Planning Act 1990 s 293(2)(b) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 11).

4 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82C(6)(b) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1076).

5 See the Ancient Monuments and Archaeological Areas Act 1979 s 50(4)(a) (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1003).

6 See the Building Act 1984 s 87 (see **BUILDING** vol 4(2) (2002 Reissue) PARA 405).

7 See the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, arts 2(4), 3(2), 4(2)(c) (art 2(4) amended by SI 2006/1457). As to the Corporate Officers see PARA 990.

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## 996. Control, use and occupation of the Palace.

The control, use and occupation of the Palace of Westminster and its precincts is permanently enjoyed by the Houses of Parliament<sup>1</sup>. The control of the accommodation and services in the part of the Palace and its precincts occupied by or on behalf of the House of Commons is vested in the Speaker of the House of Commons; control of the part occupied by or on behalf of the House of Lords is vested in the Lord Speaker; control of Westminster Hall and the Crypt Chapel is vested jointly in the Lord Great Chamberlain, as representative of the Queen, the Speaker of the House of Commons, and the Lord Speaker; and the control of Her Majesty's Robing Room, the adjoining staircase and ante-room and the Royal Gallery lies with the Lord Great Chamberlain<sup>2</sup>.

<sup>1</sup> The change in the management of the Palace on 1 April 1992 (see PARA 995) did not affect the position regarding its control, use and occupation.

For the purposes of the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 49 (see **FIRE SERVICES**): (1) the occupation of any premises by the Corporate Officer of the House of Lords for the purposes of that House, by the Corporate Officer of the House of Commons for the purpose of that House, or by those Corporate Officers acting jointly for the purposes of both Houses, is to be regarded as occupation by the Crown; (2) any premises in which either or both of those Corporate Officers has or have an interest which is that of an owner are to be regarded as premises owned by the Crown; and (3) in relation to premises specified in heads (1) and (2), the relevant Corporate Officer is the responsible person (within the meaning of the Order: see **FIRE SERVICES**): art 49(3). Nothing in the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, authorises the entry of any premises occupied by the Crown: art 49(4). Nor does anything in the Order authorise proceedings to be brought against Her Majesty in her private capacity, and this paragraph must be construed as if the Crown Proceedings Act 1947 s 38(3) (interpretation of references in that Act to Her Majesty in her private capacity) were contained therein: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, art 49(5). That order, with limited exceptions, binds the Crown: see art 49(1), (2). As to the Corporate Officers see PARA 990.

<sup>2</sup> As agreed by Her Majesty and set out in a statement to the Commons by the then Prime Minister, Mr Harold Wilson, in 1965: see 709 HC Official Report (5th Series), 23 March 1965, col 328. As to the Speaker of the House of Commons see PARAS 931-936. As to the Speaker of the House of Lords see PARAS 850, 851. As to the Lord Great Chamberlain see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 546.

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## **(ii) Premises outside the Palace of Westminster**

### **997. Ownership and management etc of premises outside the Palace.**

Premises outside the Palace of Westminster acquired for the purposes of the House of Lords or the House of Commons are vested in the Corporate Officer of the Lords or the Corporate Officer of the Commons respectively<sup>1</sup>. The control, use and occupation of such premises lies with the House concerned, or with both Houses, as the case may be.

For the purposes of:

- 81 (1) the Town and Country Planning Act 1990<sup>2</sup>;
- 82 (2) the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>3</sup>;
- 83 (3) the Ancient Monuments and Archaeological Areas Act 1979<sup>4</sup>;
- 84 (4) the Building Act 1984<sup>5</sup> and the London Building Acts (Amendment) Act 1939<sup>6</sup>;  
and
- 85 (5) the Regulatory Reform (Fire Safety) Order 2005<sup>7</sup>,

any interest of the Corporate Officers in land or occupation and use of land for the purposes of the Lords or the Commons is to be regarded as a Crown interest or as occupation and use by the Crown<sup>8</sup>. Development, works and operations carried out by or on behalf of the Corporate Officers are to be regarded as carried out by or on behalf of the Crown<sup>9</sup>. In relation to heads (2) to (5) Corporate Officers are to be regarded as the appropriate Crown authority in relation to Crown land<sup>10</sup>.

1 See the Parliamentary Corporate Bodies Act 1992 ss 1(3), 2(3); and PARA 990. As to the Corporate Officers see PARA 990.

2 See **TOWN AND COUNTRY PLANNING**.

3 See **TOWN AND COUNTRY PLANNING**.

4 See **NATIONAL CULTURAL HERITAGE**.

5 I.e the Building Act 1984 Pt 1 (ss 1-46) (see **BUILDING**). For the purposes of the Building Act 1984 s 87, any property consisting of a house, building or other premises comprised in land in which a Corporate Officer or the Corporate Officers has or have an interest must be treated as property belonging to Her Majesty in right of the Crown: Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 4(2)(a).

6 I.e the London Building Acts (Amendment) Act 1939 s 151. For these purposes, any building, structure or work comprised in land in which a Corporate Officer or the Corporate Officers has or have an interest must be treated as vested in Her Majesty: see the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 4(3)(a).

7 I.e the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 (see **FIRE SERVICES**). Although the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, refers to the Fire Precautions Act 1971 this Act has been repealed and replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

8 See the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, arts 2(1), (2), (3)(a), (b), 3(1)(a), (c), 4(1)(a), (3)(b), 5(a), (b) (art 2 amended by SI 2006/1457).

9 See the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, arts 2(1), (3)(b), 3(1)(b) (art 2 as amended: see note 8).

10 See the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, 3(1), 4(1)(b), (2)(b). As to Crown land see **CROWN PROPERTY**.

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## **5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT**

### **(1) MEETING OF PARLIAMENT**

#### **(i) Issue and Return of Writs**

#### **998. The summoning of Parliament.**

A new Parliament can be called together for the transaction of business only by the Crown<sup>1</sup>. It is summoned in pursuance of a royal proclamation made with the advice of the Privy Council. This proclamation directs writs to be issued by the Lord Chancellor and appoints a day and place for the meeting of the new Parliament<sup>2</sup>.

1 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 917. See also, as to the annual meeting of Parliament, **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 415; and PARA 805.

2 See eg the Proclamation for Dissolving the Present Parliament and Declaring the Calling of Another given on 11 April 2005 and published as a Supplement to the London Gazette of that date. Acting upon the advice of the Privy Council, the Crown has power to prorogue Parliament by royal proclamation from the day for which it is summoned or to which it stands prorogued to any further day being not less than 14 days from the original date: see the Prorogation Act 1867 s 1; and PARA 1018. Her Majesty may also issue a proclamation summoning Parliament to meet for the dispatch of business on a date earlier than that for which it had originally been summoned: see the Meeting of Parliament Act 1797 s 1; and PARA 1017. See further Blackburn, *The Meeting of Parliament* (1990) Ch 1.

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#### **999. Writs of summons to lords.**

Writs of summons, in which are stated the day and place of meeting of the new Parliament<sup>1</sup>, are issued from the office of the Clerk of the Crown in Chancery<sup>2</sup> by the direction of the Lord Chancellor to such lords spiritual and temporal as have established their right to receive them<sup>3</sup>.

1 Since 1681 Parliament has always met at Westminster, but there is no constitutional objection to its being summoned to meet in any other place.

2 As to the Clerk of the Crown in Chancery see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 921.

3 As to the entitlement to receive writs see PARA 829 et seq. See the *Report of the Joint Committee on the Presence of the Sovereign in Parliament* (HC Paper 212 (1901)) p 7.

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### **1000. Writs for election of members of the House of Commons.**

Writs for the election of the members of the House of Commons are sent to the returning officers in each constituency directing the election of a member to serve for that constituency in Parliament<sup>1</sup>.

<sup>1</sup> As to the form and issue of the writ at a general election see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 199-201. As to the duties of returning officers with regard to returns see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 355. As to the issue of a writ at a by-election see PARA 1094; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 199-201.

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### **(ii) Oath of Allegiance**

#### **1001. Oath of allegiance or affirmation.**

The members of both Houses of Parliament must make and subscribe the oath of allegiance, or make a solemn affirmation in lieu<sup>1</sup>, on taking their seats for the first time, in every new Parliament<sup>2</sup> and on a demise of the Crown<sup>3</sup>.

The form of oath or affirmation, which must be solemnly and publicly made by members in their respective Houses, is fixed by statute<sup>4</sup>, and any lord spiritual or temporal who votes or who sits in the House of Lords, and any member who votes or who sits as a member in the House of Commons during any debate after the Speaker<sup>5</sup> has been chosen, without taking the oath or making such affirmation, is liable to a fine of £500 for each offence<sup>6</sup>.

<sup>1</sup> See HC Standing Orders (Public Business) (2009) no 5.

<sup>2</sup> See the Parliamentary Oaths Act 1866 ss 1, 3. The form of oath prescribed thereby was, however, repealed by the Statute Law Revision Act 1875. On the order in which the Oath is taken, see Erskine May's Parliamentary Practice (23 Edn, 2004) p 283 et seq. See also *Sharma v A-G of Trinidad and Tobago* [2007] UKPC 41, [2007] 1 WLR 2223 (members of Parliament in Trinidad and Tobago entitled to salary despite non-appointment of Speaker precluding them from taking oath of allegiance).

<sup>3</sup> See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 284.

<sup>4</sup> The following is the prescribed form of oath: 'I, [name], do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law. So help me God': see the Promissory Oaths Act 1868 ss 2, 8, 10 (s 8 amended by the Statute Law Revision Act 1966). The oath may be taken in the manner prescribed by the Oaths Act 1978 s 1, or in the manner in which an oath is usually administered in Scotland: see s 3; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1021. Any lord or member of the House of Commons who objects to taking an oath either because he has no religious belief, or because taking an oath is contrary to his religious belief, is permitted to make the following affirmation, namely: 'I, [name], do solemnly, sincerely and truly declare and affirm that I will be faithful and bear true allegiance to Her Majesty

Queen Elizabeth, her heirs and successors, according to law': see the Oaths Act 1978 ss 5, 6; **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 923; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1023.

5 As to the Speaker of the House of Commons see PARAS 931-936.

6 See the Parliamentary Oaths Act 1866 s 5 (amended by the Supreme Court of Judicature (Consolidation) Act 1925 ss 18, 224(1)). The pecuniary penalty can be sued for only by the Crown: *Bradlaugh v Clarke* (1883) 52 LJQB 505, HL. In addition to the pecuniary penalty, the seat of a member of the House of Commons who transgresses this rule is vacated as if he were dead: Parliamentary Oaths Act 1866 s 5. The penal sections of the Parliamentary Oaths Act 1866 were not repealed by the Statute Law Revision Act 1875: see *Clarke v Bradlaugh* (1881) 8 QBD 63, CA. The decision to remove certain services, classed as 'proceedings in Parliament', from a member who refuses to swear an Oath or swear allegiance, is not amenable to judicial review: *Re McGuinness's Application* [1997] NI 359.

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### **(iii) Manner in which Lords and Members of the House of Commons take their Seats**

#### **1002. Introduction of a lord of Parliament.**

A lord spiritual who has become entitled to a seat or has subsequently been translated to another see<sup>1</sup>, or a newly-created peer<sup>2</sup>, must be introduced and conducted to his place in the House of Lords with certain formalities<sup>3</sup>. A newly-created peer's patent is entered in full upon the journals of the House<sup>4</sup>.

1 As to lords spiritual see PARA 829 et seq.

2 As to the appointment of peers see PARA 843.

3 For the form of ceremony see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 508 et seq; and for an example see 239 Lords Journals 32. Two or more lords may be introduced on the same day: see 190 Lords Journals 320. Excepted hereditary peers are not introduced but simply take the oath: as to excepted hereditary peers see PARA 836.

4 A bishop to whom a writ of summons has been issued is not a peer and has no patent: see HL Standing Orders (Public Business) (2007) no 6. However, a lord spiritual may be created a peer, eg George Carey, lately Archbishop of Canterbury, was created Lord Carey of Clifton: see 236 Lords Journals 17.

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#### **1003. Manner in which a member of the House of Commons takes his seat.**

There is no formal introduction of members of the House of Commons at the beginning of the first session of a new Parliament. The return book, which is delivered in by the Clerk of the Crown in Chancery, is the only evidence which is required of each member's election<sup>1</sup>.

When a member is elected at a by-election to fill a vacancy in the House<sup>2</sup>, during the course of a Parliament, he must be formally introduced<sup>3</sup>.

1 See **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 479.

2 For the causes which necessitate the vacation of their seats by members see PARAS 897 et seq, 1094 et seq.

3 See the Resolution of the House of Commons dated 23 February 1688, 10 Commons Journals 34. The Clerk of the Crown sends a certificate of the election of a member at a by-election to the Clerk of the House. Before the new member can take his seat, he must obtain a certificate from the Public Bill Office stating that the certificate from the Crown Office has been duly received, be formally introduced by two members, take the oath or make his affirmation in the prescribed form and sign the roll. The oath may be taken at any time during the sitting of the House before public business has been entered on or after it has been disposed of, but no debate or business may be interrupted for this purpose: see HC Standing Orders (Public Business) (2009) no 6.

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#### **(iv) Preliminary Proceedings when a New Parliament Meets**

##### **1004. Proceedings on the first day of a new Parliament.**

On the day when a new Parliament is appointed to meet, the Lord Chancellor (or Lord President of the Privy Council) and four other Lords Commissioners, who must be members of the Privy Council<sup>1</sup>, take their seats on a bench in front of the Throne and direct the Gentleman Usher of the Black Rod to let the Commons know that the Lords Commissioners desire their attendance in the House of Lords to hear the commission read<sup>2</sup>.

As soon as the members of the House of Commons appear at the bar, the Lord Chancellor (or Lord President) informs them that he and the other Lords Commissioners have been empowered by letters patent under the Great Seal 'to do all things in Her Majesty's name which are to be done on her part in this Parliament, as by the letters patent will more fully appear'. The letters patent are then read aloud by the Reading Clerk, after which the Lord Chancellor (or Lord President, as the case may be) informs both Houses that, as soon as the members of the two Houses have taken the oath, the causes of the monarch's calling the Parliament will be declared to them, and he further informs the Commons that it is the monarch's pleasure that they should repair to the place where they are to sit, and there proceed to the choice of some proper person to be their Speaker, and that they should present such person, when they have chosen him, for the monarch's approbation. The Commons then retire to their own House to choose a Speaker, and the House of Lords is adjourned during pleasure<sup>3</sup>.

1 As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.

2 The monarch must meet the two Houses either in person or by representatives at the beginning of a new Parliament or new session of an existing Parliament: see 4 Co Inst 6; 1 Bl Com (14th Edn) 153.

3 As to the meeting of a new Parliament, see generally Erskine May's Parliamentary Practice (23rd Edn, 2004) p 278 et seq.

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### **1005. Proceedings in the House of Lords.**

In the House of Lords, when the House has been resumed and prayers have been said, the Lord Speaker takes the oath. She goes alone to the table of the House, repeats the oath of allegiance and signs the roll, after which she returns to the Woolsack, and any lords who are present take the oath or make the affirmation prescribed by statute. Each lord presents his writ of summons to the clerk, signs the roll and shakes hands with the Lord Speaker<sup>1</sup>.

1 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) p 280 et seq, p 509 et seq.

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### **1006. Election of the Speaker by the House of Commons.**

On returning from hearing the commission read<sup>1</sup>, the members of the House of Commons immediately proceed to choose a Speaker, the mace lying beneath the table of the House. The chair is taken by that member, present in the House and not being a Minister of the Crown, who has served for the longest period continuously as a member of the House (known as the Father of the House)<sup>2</sup>.

The occupant of the chair ascertains whether the former Speaker is willing to be chosen as Speaker and, the former Speaker having submitted himself to the House, calls upon a member to move that he do take the chair of the House as Speaker, and the question is then put<sup>3</sup>. If the question is agreed to, the former Speaker thereupon takes the chair as Speaker-elect<sup>4</sup>.

However, if the question is negatived, the member presiding forthwith adjourns the House to the following day at half-past two o'clock, and the House proceeds to an election of the Speaker by secret ballot<sup>5</sup>.

Preparatory arrangements for the ballot are made under the supervision of the Clerk of the House<sup>6</sup>. Nominations of candidates must be in writing and received by the Clerk of the House between half-past nine o'clock and half-past ten o'clock in the morning of the day on which the House is to elect a Speaker<sup>7</sup>. Each nomination must consist of a signed statement made by the candidate declaring his willingness to stand for election accompanied by the signatures of not fewer than 12 nor more than 15 members, of whom not fewer than three must be members elected to the House as members of any party other than that to which the candidate belongs or members of no party<sup>8</sup>. As soon as practicable following the close of nominations, lists of the candidates are placed in the members' lobby and published<sup>9</sup>.

If only one member is nominated, the member presiding shall, when the House meets to elect a Speaker, invite the member so nominated to submit himself to the House, and shall then put the question that that member do take the Chair of the House as Speaker<sup>10</sup>.

If two or more members are nominated, the member presiding invites each candidate to address the House, the order in which they do so having been determined in advance by lot<sup>11</sup>. After each candidate has been given the opportunity to speak, the member presiding directs

the House to proceed to a ballot, which is taken in the lobbies unless the member presiding directs otherwise<sup>12</sup>. The method of election (known as the exhaustive ballot system<sup>13</sup>) requires each member to vote for only one candidate on a ballot paper bearing the names of the candidates in alphabetical order<sup>14</sup>.

If a candidate receives more than half the votes cast, the member presiding forthwith puts the question that that member do take the Chair of the House as Speaker<sup>15</sup>. If no candidate receives more than half the votes cast in the ballot, the member presiding directs the House to proceed forthwith to a further ballot<sup>16</sup>.

When the House has chosen a Speaker, the Speaker-elect is led to the chair by his proposer and seconder and further acknowledges the honour done to him, the mace being placed upon the table. After congratulations from members, the leader of the House moves the adjournment, the Speaker-elect puts the question, and the proceedings are brought to a close<sup>17</sup>.

1 As the reading of the Commission see PARA 1004

2 See HC Standing Orders (Public Business) (2009) no 1(1).

3 See HC Standing Orders (Public Business) (2009) no 1A(1). When there is no contest for the office, the proposer and the seconder are generally chosen from different political parties to signify the united opinion of the House.

4 HC Standing Orders (Public Business) (2009) no 1A(2).

5 HC Standing Orders (Public Business) (2009) no 1A(3), 1B(1). This procedure of election by secret ballot was adopted in Standing Orders on 22 March 2001 following a report by the Procedure Committee: see the 257 Commons Journals 254. The first occasion it was used was on 22 June 2009, following the resignation of Speaker Martin, when Speaker Bercow was elected in a contest involving ten candidates and three ballots.

6 HC Standing Orders (Public Business) (2009) no 1B(2).

7 HC Standing Orders (Public Business) (2009) no 1B(3)(a).

8 HC Standing Orders (Public Business) (2009) no 1B(3)(b). No member may sign more than one such statement and if any member does so, his signature is no longer valid: no 1B(3)(b).

9 HC Standing Orders (Public Business) (2009) no 1B(3)(c).

10 HC Standing Orders (Public Business) (2009) no 1B(4).

11 See HC Standing Orders (Public Business) (2009) no 1B(5), (6).

12 HC Standing Orders (Public Business) (2009) no 1B(8)(a). The member presiding may not vote in the ballot: no 1B(7).

13 See the *Second Report of the Procedure Committee: Election of a Speaker*, (HC Paper 40 (2000-01)).

14 For provision as to the ballot see HC Standing Orders (Public Business) (2009) no 1B(8)(b)-(e), (9).

15 HC Standing Orders (Public Business) (2009) no 1B(10).

16 See HC Standing Orders (Public Business) (2009) no 1B(11). No new nominations may be received: no 1B(12). The candidates at the previous ballot who either received the fewest votes, or received less than 5% of votes cast, or who (within ten minutes of the announcement of the result of the previous ballot) notifies the member presiding of his intention to withdraw, are removed from the ballot paper: no 1B(12). If the effect of the foregoing is to remove every name but one from the ballot paper, the member presiding puts the question that he takes the Chair as Speaker: see no 1B(13).

17 See HC Standing Orders (Public Business) (2009) no 1A(2). The Speaker is elected for the duration of the Parliament. If, owing to his death or resignation during the course of the Parliament, a vacancy occurs in the office, it is customary for a Minister of the Crown in the Commons to acquaint the House that Her Majesty 'gives leave to the House to proceed forthwith to the choice of a new Speaker': see 232 Commons Journals 126; and Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 280. Immediately after the choice of the House has

been made, a Minister of the Crown acquaints the House that he has it in command from the monarch that the House should present their Speaker in the House of Peers for Her Majesty's royal approbation. The approval of the Crown to the choice of the Commons is then signified by the Lords Commissioners: see eg 711 HL Official Reports (5th series), 22 Jun 2009, col 1450.

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### **1007. Confirmation of the Speaker's election.**

On the second day of the first meeting of a new Parliament<sup>1</sup>, the Lords Commissioners send the Gentleman Usher of the Black Rod<sup>2</sup> to the Commons to desire their immediate attendance in the House of Lords. The Speaker-elect<sup>3</sup>, with the Commons, comes to the bar of the House of Lords and acquaints the Lords Commissioners that, in obedience to the monarch's commands, Her Majesty's faithful Commons, in the exercise of their undoubted rights and privileges, have proceeded to the election of a Speaker, and, as the object of their choice, submits himself with all humility for the monarch's gracious approbation. The Lords Commissioners intimate the approval of the monarch and confirm the election of the Speaker, who then proceeds, in the name and on behalf of the Commons of the United Kingdom, to lay claim 'to their ancient and undoubted rights and privileges, and especially to freedom from arrest, to freedom of speech in debate, and to free access to Her Majesty whenever occasion may require it, and to the most favourable construction of all their proceedings'<sup>4</sup>. He also prays, on his own account, that whatever error may occur in the discharge of his duty may be imputed to him alone, and not to Her Majesty's faithful Commons. In answer to this speech the Lords Commissioners inform the Speaker 'that Her Majesty most readily confirms all the rights and privileges which have ever been granted to or conferred upon the Commons by Her Majesty or any of Her Royal Predecessors' and assures him that Her Majesty will always put the most favourable construction on his words and actions.

1 As to the proceedings on the first day of a new Parliament see PARA 1004.

2 As to the Gentleman Usher of the Black Rod see PARA 857.

3 As to the election of the Speaker see PARA 1006.

4 In practice, freedom of access to Her Majesty and her favourable construction of Commons proceedings are in modern times less significant than the other freedoms sought by the Speaker, particularly freedom of speech in debate. As to parliamentary privileges see PARA 1076 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(1) MEETING OF PARLIAMENT/(iv) Preliminary Proceedings when a New Parliament Meets/1008. Proceedings in the House of Commons after confirmation of the Speaker's election.

### **1008. Proceedings in the House of Commons after confirmation of the Speaker's election.**

As soon as the ceremony of confirmation of the Speaker's election has been concluded, the Speaker returns to the House of Commons and reports to the House that his election has been approved by the monarch and that the privileges of the House have been confirmed. He again

thanks the House for the honour which it has conferred upon him, reminds members that it is incumbent upon them to take the oath prescribed by law, and himself takes the oath. Other members who are present then either take the oath or make the affirmation in the manner prescribed by statute<sup>1</sup>, after which they sign the roll.

1 See PARA 1001.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(1) MEETING OF PARLIAMENT/(v) Proceedings at the Opening of Parliament/1009. The Queen's Speech.

## **(v) Proceedings at the Opening of Parliament**

### **1009. The Queen's Speech.**

Neither House of Parliament can proceed with any public business until the session has been opened either by the monarch in person or by Lords Commissioners acting on her behalf. On this occasion the causes for the summoning of Parliament are communicated to the two Houses in the Queen's Speech, which states the government's policy and intended programme of business for the forthcoming session and informs the Commons that estimates of government expenditure will be laid before them. The causes of summons, as declared in the Queen's Speech, do not bind Parliament to consider them alone, or to proceed at once to the consideration of any of them. In the first session of a new Parliament the Speech is not delivered until a Speaker of the House of Commons has been elected and an opportunity has been given to members of both Houses to take the oath<sup>1</sup>. In each subsequent session there are no such preliminary proceedings and the Speech is delivered on the first day. However, if a demise of the Crown takes place while Parliament is prorogued, the delivery of the Speech in the following session is delayed in order to enable members to take the oath of allegiance to the new monarch<sup>2</sup>.

1 As to these preliminary proceedings see PARAS 1004-1008.

2 See eg 133 Lords Journals 3, 8. See also PARAS 1014-1015.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(1) MEETING OF PARLIAMENT/(v) Proceedings at the Opening of Parliament/1010. Opening of Parliament by the monarch in person.

### **1010. Opening of Parliament by the monarch in person.**

When the monarch opens the session in person<sup>1</sup>, she proceeds in state to the House of Lords where, seated on the Throne, she commands the Gentleman Usher of the Black Rod<sup>2</sup> to summon the Commons. All the lords are in their robes and standing until the monarch commands them to be seated.

Meanwhile, the House of Commons has met and prayers have been read. As soon as the Gentleman Usher of the Black Rod has announced the monarch's command, the Speaker<sup>3</sup> leaves the chair and proceeds to the House of Lords, followed by the members of the House.

When he reaches the bar of the House of Lords, the Speaker bows to the monarch. The Lord Chancellor then hands a copy of the Speech to Her Majesty who reads it aloud, and then hands it back to the Lord Chancellor. The monarch then retires from the House and the Speaker and the members of the House of Commons withdraw to their own chamber.

1 See generally Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 287-288. See HL Standing Orders (Public Business) (2007) no 1; and the *Report of the Joint Committee on the Presence of the Sovereign in Parliament* (HC Paper 212 (1901)).

2 As to the Gentleman Usher of the Black Rod see PARA 857.

3 As to the Speaker of the House of Commons see PARAS 931-936.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(1) MEETING OF PARLIAMENT/(v) Proceedings at the Opening of Parliament/1011. Opening of Parliament when the monarch is not present.

### **1011. Opening of Parliament when the monarch is not present.**

When the monarch is not present in person to open the session of Parliament, the task is deputed to the Lords Commissioners, who are appointed by letters patent<sup>1</sup>. The Lord Chancellor reads Her Majesty's Speech, and, except that there is no procession and that the Lords Commissioners request, instead of commanding, the attendance of the Commons, the proceedings are the same as when the monarch is present in person<sup>2</sup>.

After the delivery of the Speech, both Houses are suspended until later in the afternoon of the same day.

1 See generally Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 288-289. As to the Lords Commissioners see PARA 1004.

2 See PARA 1010.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(1) MEETING OF PARLIAMENT/(v) Proceedings at the Opening of Parliament/1012. Proceedings in the House of Lords after the opening of Parliament.

### **1012. Proceedings in the House of Lords after the opening of Parliament.**

When the House of Lords resumes its sitting a bill of a formal character, the Select Vestries Bill, is read a first time<sup>1</sup>. Immediately afterwards, the Lord Speaker<sup>2</sup> reports the Speech to the House, and an address thanking Her Majesty for her most gracious speech<sup>3</sup> is moved and seconded by lords to whom the duty has been entrusted by the government. The debate on the address is then adjourned<sup>4</sup> on a motion by the Leader of the House, who congratulates the mover and seconder and comments generally on the Queen's speech, as do the other party leaders.

The debate is continued over a period of four or five more sitting days. By informal agreement between the government and the Opposition, different policy areas are discussed on each day.

Amendments to the address may be moved on any day, and are normally disposed of at the end of that day's debate. As soon as the address has been agreed to<sup>5</sup> it is ordered to be presented to the monarch by the Lord Chamberlain or the Captain of the Gentlemen at Arms<sup>6</sup>.

1 The purpose of this first reading is to assert the Lords' right of deliberating without reference to the immediate cause of summons.

2 As to the Lord Speaker see PARAS 850, 851.

3 As to the Queen's speech see PARA 1009.

4 Before the House adjourns on the first day of the session it is customary to appoint lords to be Chairman and Principal Deputy Chairman of Committees (see PARA 852). In addition, an order is made to prevent stoppages in the streets, directing the Commissioner of the Police for the Metropolis to ensure that no obstruction is allowed to interfere with the passage of the lords to and from the House while it is sitting.

5 The form of the address in answer to a Speech from the Throne is always the same, namely, 'Most Gracious Sovereign, We Your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal in Parliament assembled, beg leave to thank Your Majesty for the most gracious Speech which Your Majesty has addressed to both Houses of Parliament'.

6 See PARA 816.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(1) MEETING OF PARLIAMENT/(v) Proceedings at the Opening of Parliament/1013. Proceedings in the House of Commons after the opening of Parliament.

### **1013. Proceedings in the House of Commons after the opening of Parliament.**

After the opening of Parliament, the House of Commons resumes its sitting. Sessional orders are made<sup>1</sup>, and a bill of a formal character, the Outlawries Bill, is read the first time<sup>2</sup>; certain other business may also be transacted<sup>3</sup>. The Speaker<sup>4</sup> then reports to the House that he has been to the House of Lords to hear the Speech from the Throne, which he proceeds to read to the House<sup>5</sup>. Two members who have been entrusted with the task by the government then move and second an address of thanks to the monarch. A debate lasting several days then follows. Amendments to the address are moved by way of additions to it. Such amendments invariably raise questions of public policy, criticising the action of the government or its programme as disclosed in the Speech from the Throne. The debate on the address begins with one or more days covering the whole range of government policy. Thereafter debate concentrates on specific areas of policy chosen by the Opposition, but without prejudice to members' rights to raise other topics. Finally debate takes place on amendments moved by members of the main opposition party. An opportunity is provided on the final day of the debate for a further amendment, commonly moved by a member of one of the other opposition parties, to be decided without further debate<sup>6</sup>. As soon as the address has been agreed to by the House, an order is made for it to be presented to the monarch by 'such members of the House as are of Her Majesty's most honourable Privy Council, or of Her Majesty's Household'<sup>7</sup>.

1 See 251 Commons Journals 1-2.

2 The purpose of this first reading is to assert the right of the House to deliberate without reference to the immediate cause of summons.

3 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 290.

4 As to the Speaker of the House of Commons see PARAS 931-936.

5 If an amendment to the address is carried, it is usually treated as a vote of want of confidence in the government.

6 See HC Standing Orders (Public Business) (2009) no 33.

7 The form of the address in answer to the Speech from the Throne is similar to that in the House of Lords: see PARA 1012 note 5.

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## **(vi) Proceedings on a Demise of the Crown**

### **1014. Effect on Parliament of a demise of the Crown.**

A demise of the Crown<sup>1</sup> does not bring either a Parliament or a session to an end<sup>2</sup>. However, the two Houses are required to meet as soon as possible after a demise<sup>3</sup>. If Parliament is sitting when a demise of the Crown takes place, it must immediately proceed to act<sup>4</sup> without any formal summons. If it stands adjourned or is prorogued at the time of a demise, it must meet and sit with the least possible delay. Members of both Houses must proceed immediately to Westminster in order to take the oath of allegiance to the new monarch.

Where there is a demise after the proclamation summoning a new Parliament has been given but before the date of the poll, polling day is postponed by 14 days<sup>5</sup>.

1 The term 'demise of the Crown' is traditionally used to refer to the death of a reigning monarch. Upon the abdication of King Edward VIII, there was a demise of the Crown by Act of Parliament: see His Majesty's Declaration of Abdication Act 1936 s 1(1).

2 See the Representation of the People Act 1867 s 51 (amended by the Statute Law Revision Act 1893). For the history of earlier legislative provisions, see Blackburn, *The Meeting of Parliament* (1990) p 56 et seq.

3 See the Succession to the Crown Act 1707 ss 4, 5 (amended by the Statute Law Revision Act 1878; the Statute Law Revision Act 1888).

4 See PARA 1015.

5 See the Representation of the People Act 1985 s 20; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 197.

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### **1015. Meeting of Parliament after a demise of the Crown.**

As soon as each House of Parliament meets after a demise of the Crown<sup>1</sup>, its members proceed immediately to take the oath of allegiance to the new monarch. A message under the sign manual is sent to each House, in which the monarch acquaints the Lords and Commons of the

death of his predecessor and states such other matters as may be necessary in the circumstances.

Each House votes an address condoling with the monarch upon the death of his predecessor and expressing loyalty to him upon his accession to the Crown. If the demise of the Crown has taken place in the course of a session, business is then resumed and proceeds as usual; but, if it has occurred during a period of adjournment<sup>2</sup> or prorogation<sup>3</sup>, both Houses adjourn for a short period as soon as the addresses have been presented to the new monarch.

1 As to the effect of a demise of the Crown see PARA 1014.

2 As to adjournment see PARAS 1016-1017 et seq.

3 As to prorogation see PARAS 1018-1020.

Halsbury's Laws of England/Parliament (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(2) ADJOURNMENT OF PARLIAMENT/1016. Power of each House to adjourn.

## (2) ADJOURNMENT OF PARLIAMENT

### 1016. Power of each House to adjourn.

Each House of Parliament has the power to adjourn its sittings for any period of time to be determined by an order of the House. Power is given by standing orders of the two Houses to the Lord Speaker (after consultation with Her Majesty's government) and the Speaker respectively, if they are satisfied that the public interest requires it, to summon the Houses to meet on an earlier date than that to which they have been adjourned<sup>1</sup>.

1 See HL Standing Orders (Public Business) (2007) no 17(1); and HC Standing Orders (Public Business) (2009) no 13(1). If the Lord Speaker is unable to act for this purpose, the Chairman of Committees, after consultation with the government, may act in her stead: HL Standing Orders (Public Business) (2007) no 17(2). The Speaker, or in certain circumstances his deputies, may exercise these powers only on representations by Her Majesty's ministers: see HC Standing Orders (Public Business) (2009) no 13(1).

Any time during which both Houses are adjourned for more than four days is not taken into account when reckoning periods of time specified for the laying of subordinate legislation before both Houses in certain cases, including (1) the period of 21 days within which an order subject to the Statutory Orders (Special Procedure) Act 1945 may be annulled (see s 4(1); and **PARLIAMENT** vol 34 (Reissue) PARA 919); (2) the period of 40 days within which statutory instruments may be annulled, or for which drafts of such instruments must be laid before being proceeded with, under the Statutory Instruments Act 1946 ss 5, 6 (see s 7(1); and **STATUTES** vol 44(1) (Reissue) PARA 1516); and (3) the periods of 60 days and 120 days specified in the procedures for approving remedial orders or draft remedial orders, and submitting required information, under the Human Rights Act 1998 Sch 2 (see Sch 2 para 6; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**).

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### 1017. Power of the Crown to adjourn Parliament and to summon Parliament when adjourned or prorogued.

Formerly, the Crown signified its pleasure that both Houses of Parliament should adjourn, but there is no instance of an adjournment of this kind since 1814<sup>1</sup>. If both Houses of Parliament stand adjourned with more than 14 days to run, Her Majesty may issue a proclamation, with the advice of the Privy Council, declaring that the two Houses are to meet on a named day not less than six days from the date of the proclamation; thereupon both Houses stand adjourned to that day, notwithstanding any previous adjournment<sup>2</sup>. When Parliament stands prorogued to a certain day, Her Majesty may issue a proclamation, with the advice of the Privy Council, declaring that Parliament is to meet on any earlier day after the proclamation; thereupon Parliament stands prorogued to that day, notwithstanding the previous prorogation<sup>3</sup>.

Whenever the Crown authorises the calling out of any reserve force for permanent service in the event of national danger, great emergency or an actual or apprehended attack on the United Kingdom at a time when Parliament stands adjourned or prorogued for more than five days, a proclamation must be issued for the meeting of Parliament within five days and Parliament must then meet and sit on the day appointed by the proclamation<sup>4</sup>.

If when emergency regulations are made<sup>5</sup> either House of Parliament stands adjourned to a day after the end of the period of five days beginning with the date on which the regulations are made, the Speaker of the House of Commons<sup>6</sup>, or the Lord Speaker<sup>7</sup> as appropriate, must arrange for the House to meet on a day during that period<sup>8</sup>.

1 See 49 Lords Journals 747; 69 Commons Journals 132; and Erskine May's Parliamentary Practice (23rd Edn, 2004) p 274.

2 See the Meeting of Parliament Act 1799 s 1 (amended by the Meeting of Parliament Act 1870 s 2). As to the effect of such a proclamation on the orders of the House see the Meeting of Parliament Act 1799 s 2 (amended by the Statute Law Revision Act 1888).

3 See the Meeting of Parliament Act 1797 s 1 (amended by the Parliament (Elections and Meeting) Act 1943 s 34).

4 See the Reserve Forces Act 1996 s 52(1), (8); and **ARMED FORCES** vol 2(2) (Reissue) PARA 232. Where any order is made extending the maximum duration of service on such call out, the making of the order must be reported to Parliament: see s 53(12); and **ARMED FORCES** vol 2(2) (Reissue) PARA 236. The calling out of members of a reserve force (1) for warlike operations; or (2) for operations outside the United Kingdom for the protection of life or property, or the alleviation of distress or the preservation of life or property in time of disaster, and the extension of any period of service on call out for warlike operations, must also be reported to Parliament: see ss 54(1), (7), 55(12), 56(1), (7); and **ARMED FORCES** vol 2(2) (Reissue) PARAS 232, 236. As to the meaning of 'United Kingdom' see PARA 801 note 1.

5 See under the Civil Contingencies Act 2004 s 20: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 As to the Speaker of the House of Commons see PARAS 931-936.

7 As to the Lord Speaker see PARAS 850, 851.

8 See the Civil Contingencies Act 2004 s 28(2), (3); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

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### **(3) PROROGATION OF PARLIAMENT**

#### **1018. Prorogation by exercise of the royal prerogative.**

A session of Parliament can only be brought to an end by the exercise of the royal prerogative<sup>1</sup>. Formerly, Parliament was prorogued at the end of the session by the monarch in person, but it has not been prorogued in this manner since 1854. It is now prorogued by a commission appointed for the purpose by letters patent under the Great Seal<sup>2</sup>. It is always prorogued to a definite day on which its next meeting is to take place. If it is decided afterwards to postpone the meeting to a date later than that which was originally fixed, the further prorogation can be effected by means of a royal proclamation, issued with the advice of the Privy Council, without any subsequent writ or commission under the Great Seal<sup>3</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 274 et seq.

2 1 Bl Com (14th Edn) 187. See also Blackburn, *The Meeting of Parliament* (1990) p 46 et seq; and eg 209 Lords Journals 1039. As to the Great Seal see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 909 et seq.

3 See the Prorogation Act 1867 s 1 (amended by the Statute Law Revision Act 1893). The Prorogation Act 1867 does not apply to the case of the prorogation of Parliament at the close of a session: s 2. As to summoning Parliament at an earlier date see PARA 1017.

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### **1019. Prorogation of Parliament by the Lords Commissioners.**

On the day appointed for prorogation five Lords Commissioners<sup>1</sup> send the Gentleman Usher of the Black Rod to request the attendance of the Commons. The royal assent is given by commission to any bills which are ready to receive it, after which the senior Lord Commissioner reads the Queen's Prorogation Speech<sup>2</sup> which summarises the work of the session and then, in the monarch's name and in obedience to her commands, prorogues Parliament.

1 When the Lord Chancellor is a peer, as was always the case when he sat as Speaker in the Lords, he leads the Lords Commissioners at the prorogation ceremony; otherwise, it will be the Lord President of the Council if a peer, or another senior minister of the Crown in the House: see generally the *Second Report of the Royal Commissions for Prorogation* (HL Paper 135 (2007-2009)).

2 There is not always a speech at prorogation: see 124 Lords Journals 413; 127 Lords Journals 273.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(3) PROROGATION OF PARLIAMENT/1020. Effect of prorogation upon proceedings in Parliament.

### **1020. Effect of prorogation upon proceedings in Parliament.**

The effect of prorogation is to put an end with certain exceptions to all proceedings in Parliament then current<sup>1</sup>. Thus, bills whose stages have not been completed when Parliament is prorogued lapse.

However, proceedings on private bills, hybrid bills and provisional order confirmation bills are sometimes suspended over a prorogation or dissolution. An order is made by each House enabling the bill in question to be reintroduced if a declaration is deposited to prove its identity with the bill of the previous session. The stages through which the bill may have already

passed are then taken formally, after which its remaining stages proceed in the ordinary manner<sup>2</sup>.

Since 1998, both Houses have allowed the carrying over of certain government bills from one session to another, similar to private and hybrid bills<sup>3</sup>.

There are other exceptions to the rule by which prorogation puts an end to all proceedings then current in Parliament. These are:

- 86 (1) impeachments by the Commons may be carried on from one session to another, and from one Parliament to another<sup>4</sup>;
- 87 (2) proceedings on Measures, statutory instruments and special procedure orders laid in one session of Parliament may be taken in the next, and prorogation and dissolution are disregarded in reckoning statutory periods in connection with statutory instruments<sup>5</sup>, special procedure orders<sup>6</sup>, and remedial orders<sup>7</sup>;
- 88 (3) the orders of appointment of certain House of Lords committees remain in effect notwithstanding the prorogation of Parliament until the House makes fresh orders of appointment in the succeeding session<sup>8</sup>; and
- 89 (4) select committees in the House of Commons may be appointed and nominated for the lifetime of a Parliament by means of standing orders<sup>9</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 274.

2 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 1049-1050. In certain cases bills have been revived in a new session.

3 See 231 Lords Journals 862; and HC Standing Orders (Public Business) (2009) no 80A. See further Erskine May's Parliamentary Practice (23rd Edn, 2004) p 648 et seq.

4 4 Hatsell's Precedents of Proceedings in the House of Commons (1888 Edn) 273, 274n.

5 See the Statutory Instruments Act 1946 s 7(1); **PARLIAMENT** vol 34 (Reissue) PARA 945; and **STATUTES** vol 44(1) (Reissue) PARA 1516.

6 See the Statutory Orders (Special Procedure) Act 1945 s 4(1); and **PARLIAMENT** vol 34 (Reissue) PARA 919.

7 See the Human Rights Act 1998 s 10, Sch 2; see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

8 See HL Standing Orders (Public Business) (2007) no 65.

9 See eg HC Standing Orders (Public Business) (2009) no 152(5) (select committees related to government departments: see PARA 987).

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## **(4) DISSOLUTION OF PARLIAMENT**

### **1021. Duration of Parliament.**

Parliament can be dissolved at any time by the Crown by the exercise of the royal prerogative, but its duration is limited by statute. Unless sooner dissolved, Parliament expires after a period of five years from the day on which by the writ of summons it was appointed to meet<sup>1</sup>.

1 See the Septennial Act 1715 (amended by the Parliament Act 1911 s 7). During the 1914-18 war, the duration of Parliament was prolonged by the Parliament and Registration Act 1916; the Parliament and Local Elections Act 1916; the Parliament and Local Elections Act 1917; and the Parliament and Local Elections (No 2) Act 1917 (all repealed). The duration of Parliament was prolonged during the 1939-45 war by the Prolongation of Parliament Act 1940; the Prolongation of Parliament Act 1941; the Prolongation of Parliament Act 1943; the Prolongation of Parliament Act 1943; and the Prolongation of Parliament Act 1944 (all repealed). For further discussion see Blackburn, 'The Prerogative Power of Dissolution of Parliament: Law, Practice, and Reform' (2009) Public Law 766.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/5. MEETING, ADJOURNMENT, PROROGATION AND DISSOLUTION OF PARLIAMENT/(4) DISSOLUTION OF PARLIAMENT/1022. Manner of dissolving Parliament.

### 1022. Manner of dissolving Parliament.

Formerly, Parliament was dissolved by the monarch in person, but this method of dissolution has not been used since the reign of George III. Parliament is now dissolved by proclamation under the Great Seal<sup>1</sup>. The proclamation is made by Her Majesty with the advice of the Privy Council and announces at the same time that orders have been given for writs to be issued in due form for the summoning of a new Parliament<sup>2</sup>. Parliament is usually dissolved after it has been prorogued to a definite date<sup>3</sup>, but it may also be dissolved when both Houses stand adjourned<sup>4</sup>.

1 See generally Blackburn, *The Meeting of Parliament* (1990) ch 4. In 2007 the government proposed that future requests by a Prime Minister to the monarch for a dissolution of Parliament should be approved in advance by the House of Commons: see *The Governance of Britain* (Cm 7170) (2007), paras 35-36. See also Blackburn 'The Prerogative Power of Dissolution of Parliament: Law, Practice, and Reform', (2009) Public Law 766.

2 See eg the Proclamation for Dissolving the Present Parliament and Declaring the Calling of Another given on 11 April 2005 and published as a Supplement to the London Gazette of that date; and see generally PARA 998.

3 See eg 225 Lords Journals 371.

4 See eg 220 Lords Journals 383-384.

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### 1023. Effect of dissolution on proceedings in Parliament.

The effect of dissolution is to put an end with certain exceptions to all proceedings in Parliament then current<sup>1</sup>. However, proceedings on private bills, hybrid bills and provisional order confirmation bills are sometimes suspended over a dissolution<sup>2</sup>.

In addition, impeachments by the Commons may be carried on from one Parliament to another<sup>3</sup>.

Dissolution is disregarded in reckoning statutory periods in connection with statutory instruments<sup>4</sup>, special procedure orders<sup>5</sup>, and remedial orders<sup>6</sup>.

1 See Erskine May's Parliamentary Practice (22nd Edn, 1997) p 273.

- 2 See PARA 1020.
- 3 4 Hatsell's Precedents of Proceedings in the House of Commons (1888 Edn) 273, 274n.
- 4 See the Statutory Instruments Act 1946 s 7(1); **PARLIAMENT** vol 34 (Reissue) PARA 945; and **STATUTES** vol 44(1) (Reissue) PARA 1516.
- 5 See the Statutory Orders (Special Procedure) Act 1945 s 4(1); and **PARLIAMENT** vol 34 (Reissue) PARA 919.
- 6 See the Human Rights Act 1998 s 10, Sch 2; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(1) GENERAL PRINCIPLES/1024. Functions of the Crown, the House of Lords and the House of Commons.

## **6. THE FINANCIAL WORK OF PARLIAMENT**

### **(1) GENERAL PRINCIPLES**

#### **1024. Functions of the Crown, the House of Lords and the House of Commons.**

The Crown initiates the financial work of Parliament by a demand for a grant. It is for the House of Commons to consider to what extent that demand is to be agreed to and the charges which should be put upon the people to meet it<sup>1</sup>. An Act of Parliament is necessary to validate any grant or charge, and the consideration of such a bill gives the House of Lords the opportunity of exercising its constitutional right to assent or dissent, but not to alter the grants or charges agreed to by the House of Commons.

However, motions which take the form of merely advocating public expenditure, or the imposition of a charge, may be entertained and agreed to by the House of Commons<sup>2</sup>, and no objection is taken to recommendations in reports by select committees advocating an outlay of public money. This method of advocating expenditure without the Crown's recommendation is permitted because it is not in itself effective.

1 As to the right of the House of Commons to initiate financial legislation see PARA 822.

2 Resolutions relating to the remuneration of members have taken this form and have been regarded as conferring the necessary authority for the inclusion of additional sums in the estimates.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(1) GENERAL PRINCIPLES/1025. Methods of carrying out the functions of the Crown, the House of Lords and the House of Commons.

#### **1025. Methods of carrying out the functions of the Crown, the House of Lords and the House of Commons.**

The Crown exercises its initiative by the Speech from the Throne at the opening of Parliament<sup>1</sup>, by message or by recommendation<sup>2</sup>. In its standing orders the House of Commons has recognised the Crown's right of initiating financial measures by refusing to entertain any petition or motion for a charge upon the revenue or for releasing or compounding any sum of money owing to the Crown unless it has been recommended by the Crown<sup>3</sup>, and has further

provided that any charge upon the revenue, including any provision for releasing or compounding any sum of money owing to the Crown, must be authorised by resolution of the House<sup>4</sup>. In the case of expenditure by estimate (known as 'supply')<sup>5</sup> and of taxation (known as 'ways and means')<sup>6</sup>, the expression of the Crown's financial initiative is not recognised under any standing order but is dependent on practice based on ancient usage<sup>7</sup>.

A bill embodying the determination of the House of Commons necessary to validate any charge must be considered by the House of Lords, but in certain circumstances can acquire the force of law without the agreement of that House<sup>8</sup>.

1 See PARA 1009.

2 See PARA 812.

3 See HC Standing Orders (Public Business) (2009) no 48.

4 See HC Standing Orders (Public Business) (2009) no 49.

5 See PARA 1043 et seq.

6 See PARA 1049 et seq.

7 See Erskine May's Parliamentary Practice (23rd Edn, 2004) Ch 29.

8 See the Parliament Act 1911 s 1(1); and PARA 827. As to resistance by the Lords to tacking by the Commons see also PARA 825 note 1.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(1) GENERAL PRINCIPLES/1026. Nature of parliamentary control.

### **1026. Nature of parliamentary control.**

Parliamentary control over the revenue and its expenditure is primarily secured by the facts that (1) no tax may be imposed without authority of Parliament expressed in formal enactments<sup>1</sup>; and (2) no expenditure may be incurred without legislative authority<sup>2</sup>.

1 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 229.

2 See PARA 1024; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 228.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(1) GENERAL PRINCIPLES/1027. Control of appropriation.

### **1027. Control of appropriation.**

Parliamentary control exercised in respect of the determination in greater or lesser detail of how the revenue is to be raised and expended ends with the act of voting. Control of appropriation is exercised over those who actually expend the money through the knowledge that accounts will have to be submitted and that these accounts will be carefully scrutinised. For this purpose accounts must be submitted to the House of Commons by certain dates<sup>1</sup> of (1) the receipts and issues of the Consolidated Fund and the National Loans Fund<sup>2</sup>; (2) the appropriation of sums issued by way of supply grants<sup>3</sup>; and (3) the receipts and expenditure of

a number of miscellaneous funds the accounts of which have by statute to be laid before Parliament annually.

- 1 See PARAS 1055-1058.
- 2 As to these funds see PARAS 1028-1029.
- 3 See PARA 1032.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/6. The Financial Work of Parliament/(2) Public Expenditure/(i) The Consolidated Fund/1028. The Consolidated Fund.

## **(2) PUBLIC EXPENDITURE**

### **(i) The Consolidated Fund**

#### **1028. The Consolidated Fund.**

To enable Parliament to control the expenditure of the revenue there is kept at the Bank of England an account known as the Consolidated Fund<sup>1</sup> into which is paid all public moneys due the Exchequer<sup>2</sup>. Issues from that fund are subject to control by the Comptroller and Auditor General<sup>3</sup>, who is a permanent official, independent of the executive government<sup>4</sup>. The Consolidated Fund is balanced daily<sup>5</sup>. Any excess of payments into the Consolidated Fund over payments out of it must be paid into the National Loans Fund<sup>6</sup>. If there is a deficit in the Consolidated Fund, a payment to meet the deficit is made out of the National Loans Fund<sup>7</sup>. Any payment out of the Consolidated Fund without parliamentary authorisation is illegal and may be recovered if it can be traced<sup>8</sup>.

1 See the Consolidated Fund Act 1816 s 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711.

2 See the Exchequer and Audit Departments Act 1866 s 10; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711. See also the Government Resources and Accounts Act 2000 ss 1, 2; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

3 See the Exchequer and Audit Departments Act 1866 ss 10-11, 13-15; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 230.

4 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 724. The office of Comptroller and Auditor General disqualifies the holder for membership of the House of Commons: see PARA 908.

5 See the National Loans Act 1968 s 18; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 740.

6 See the National Loans Act 1968 s 18(2). As to the National Loans Fund see PARA 1029.

7 See the National Loans Act 1968 s 18(3).

8 *Auckland Harbour Board v R* [1924] AC 318, PC. Any such illegal payment cannot be ratified by the Crown or its servants, or by the executive, even with the concurrence of the Comptroller and Auditor General: *Auckland Harbour Board v R*.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(2) PUBLIC EXPENDITURE/(i) The Consolidated Fund/1029. The National Loans Fund.

### **1029. The National Loans Fund.**

All money raised by the creation of debt is payable into the National Loans Fund together with receipts representing repayments of loans made by the government from the fund, or previously charged directly on the Consolidated Fund, and interest on these loans<sup>1</sup>. The National Loans Fund, the account of which is maintained at the Bank of England, is thus the channel through which pass all the government's borrowing transactions and most of the domestic lending transactions previously charged directly on the Consolidated Fund.

<sup>1</sup> See the National Loans Act 1968; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(2) PUBLIC EXPENDITURE/(i) The Consolidated Fund/1030. Classification of services.

### **1030. Classification of services.**

The ordinary public expenditure of the year is divided into 'Consolidated Fund Standing Services' and 'Supply Services'<sup>1</sup>. Each category is paid from the Consolidated Fund<sup>2</sup>, but the nature of the authority on which the payment is made differs for each. For supply services the authority is annual and issues are authorised by order under the sign manual, countersigned by any two or more of the Treasury Commissioners<sup>3</sup>. A Consolidated Fund standing service continues until the statute authorising it expires or is repealed.

<sup>1</sup> See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 713; and Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 852-853.

<sup>2</sup> As to the Consolidated Fund see PARA 1028.

<sup>3</sup> See PARA 1032 et seq.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(2) PUBLIC EXPENDITURE/(i) The Consolidated Fund/1031. Charges upon the Consolidated Fund.

### **1031. Charges upon the Consolidated Fund.**

The principal charges upon the Consolidated Fund<sup>1</sup> are:

- 90 (1) the payment to the National Loans Fund in respect of the service of the national debt<sup>2</sup>;
- 91 (2) payments to the European Union<sup>3</sup>;
- 92 (3) the Civil List, which provides for the personal expenses of the monarch and the cost of the royal household<sup>4</sup>;

- 93 (4) annuities to certain members of the royal family<sup>5</sup>;
- 94 (5) pensions for political and civil services<sup>6</sup>, the salaries and pensions of holders of certain judicial offices<sup>7</sup>, certain miscellaneous pensions to former members of royal households and Civil List pensions<sup>8</sup>;
- 95 (6) the salaries of the Lord Chancellor<sup>9</sup>, the Speaker<sup>10</sup> and the Leader of the Opposition<sup>11</sup>; the salaries and pensions of the Comptroller and Auditor General<sup>12</sup>, the Parliamentary Commissioner for Administration<sup>13</sup> and the Health Service Commissioners<sup>14</sup>; and the salary of the Chief Electoral Officer for Northern Ireland<sup>15</sup>, and members of the Electoral Commission<sup>16</sup>;
- 96 (7) the salaries of officers of the courts of justice in England, Scotland and Northern Ireland; and
- 97 (8) issues to meet the cost of certain miscellaneous services<sup>17</sup>.

1 As to the Consolidated Fund see PARA 1028. For full particulars of the charges see the annual statements of the accounts of the Consolidated Fund. See also **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711.

2 See PARA 1029.

3 See the European Communities Act 1972 s 2(3).

4 See the Civil List Act 1837 s 5 (and **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 75); the Civil List Act 1937 s 13 (and **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 78); the Consolidated Fund (Civil List Provisions) Act 1951 s 1; the Civil List Act 1952 s 8 (and **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 78); and the Civil List Act 1972 s 7 (and **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 78).

5 See eg the Civil List Act 1937 s 3; and the Civil List Act 1952 s 3 (and **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 72).

6 See PARA 927; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 426.

7 See the Judicial Pensions and Retirement Act 1993 s 28; and **COURTS** vol 10 (Reissue) PARA 537.

8 See eg the Civil List Act 1837 s 5; and **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 75.

9 See the Ministerial and other Salaries Act 1975 s 1(2); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 478.

10 See the Ministerial and other Salaries Act 1975 s 1(3); and PARA 931.

11 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 219.

12 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 724.

13 See the Parliamentary Commissioner Act 1967 s 2(5). As to the Parliamentary Commissioner see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

14 See the Health Service Commissioners Act 1993 s 1(3), Sch 1 para 15; and **HEALTH SERVICES** vol 54 (2008) PARA 641.

15 See the Electoral Law Act (Northern Ireland) 1962 s 14.

16 See the Political Parties, Elections and Referendums Act 2000 s 1(6), Sch 1 para 5(5); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 34.

17 See the supplementary statements of the accounts of the Consolidated Fund (see eg HC Paper 112 (1995-96); HC paper 381 (2001-02)). The Treasury can make a payment to provide financial assistance to or in respect of a bank or other financial institution directly from the Consolidated Fund provided the Treasury is satisfied that the need for expenditure is too urgent to permit arrangements to be made for the provision of money by Parliament, although a report must be made to Parliament as soon as is reasonably possible: see the Banking Act 2009 s 228; and **FINANCIAL SERVICES AND INSTITUTIONS**. See also the Consolidated Fund Account 2008-09 (HC paper 929 (2008-09)).

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## (ii) Supply Estimates

### 1032. Main supply estimates.

Each year estimates to meet the demands of the public service<sup>1</sup> are submitted by the government to the consideration of the House of Commons<sup>2</sup>. These estimates set out the resource budgets<sup>3</sup> for each government department, are made up of a number of requests for resource and show the total gross expenditure and appropriations in aid for each such request<sup>4</sup>. They are usually presented to the House of Commons in March of each year and are printed by order of the House among the sessional series of House of Commons papers<sup>5</sup>. Expenditure is authorised by the House of Commons by voting the estimates<sup>6</sup>.

<sup>1</sup> The civil and defence services, House of Commons Administration, the National Audit Office and the Electoral Commission; and Erskine May's Parliamentary Practice (23rd Edn, 2004) p 863. These charges are known as the 'supply services' and are voted annually for the period from 1 April to 31 March in any year. As to the accounts to be kept see the National Loans Act 1968 ss 1(2), 21; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 723. The estimates for the House of Commons Administration and the Electoral Commission are laid by the Speaker, and the estimate of the National Audit Office by the Chairman of the Public Accounts Committee, whereas the other civil and defence services are subject to the control of the Treasury: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 863. As to Treasury control see the *Sixth Report from the Estimates Committee of the House of Commons* (HC Paper 254 (1957-58)). As to the National Audit Office see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 720. As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31 et seq. As to the Speaker of the House of Commons see PARAS 931-936. As to the Public Accounts Committee see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 719.

<sup>2</sup> See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 862-863.

<sup>3</sup> Government accounts are managed and presented on a system founded on resources: see generally the Government Resources and Accounts Act 2000; **CONSTITUTIONAL LAW AND HUMAN RIGHTS**; and the *Ninth Report of the Public Accounts Committee* (HC Paper 159 (1999-2000)).

<sup>4</sup> See the *House of Commons Information Office: Financial Procedure* (Factsheet P6 (September 2003)). Appropriations in aid are sums of money which are received annually by various departments as the result of their activities, such as the sale of publications, or of old or surplus stores or by fines or fees, and which have been authorised by the Treasury to be so applied: see generally Erskine May's Parliamentary Practice (23rd Edn, 2004) p 866. General power is conferred upon the Treasury for this purpose: see the Government Resources and Accounts Act 2000 s 2; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

<sup>5</sup> See, for the year ending 31 March 2010, *Central Government Supply Estimates: Main Supply Estimates* (HC Paper 514 (2008-09)); and see also Erskine May's Parliamentary Practice (23rd Edn, 2004) p 863.

<sup>6</sup> See the *House of Commons Information Office: Financial Procedure* (Factsheet P6 (September 2003)).

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/6. The Financial Work of Parliament/(2) Public Expenditure/(ii) Supply Estimates/1033. Contents of the estimates.

### 1033. Contents of the estimates.

The main supply estimates are contained in four volumes, the first of which covers the main central government departments and the House of Lords<sup>1</sup>, and with three separate volumes for House of Commons Administration, the National Audit Office and the Electoral Commission<sup>2</sup>.

Each estimate is divided in three parts<sup>3</sup>. Part I contains the following key facts: (1) the net provision sought (ie the amount of expenditure in resource terms and the net cash requirement for the coming financial year); (2) a formal description of the services to be financed from each request for resource in the Estimate (known as its ambit, which clearly indicates the scope of the expenditure to be financed from each request for resource including, where appropriate, associated non-cash items); (3) the department that will account for the estimate; and (4) any amounts, resources and cash, that have already been allocated to the department in the vote on account<sup>4</sup>.

Parts II and III provide a further breakdown of the income and expenditure for which approval is being sought<sup>5</sup>.

1 A total of 54 main estimates are presented for 2009-10: see the *Central Government Supply Estimates: Main Supply Estimates: Introduction* (HC Paper 514 (2009-10)) section 2(2).

2 See the *Central Government Supply Estimates: Main Supply Estimates: Introduction* (HC Paper 514 (2009-10)) section 1(6).

3 See Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 864.

4 See the *Central Government Supply Estimates: Main Supply Estimates: Introduction* (HC Paper 514 (2009-10)) section 2(5).

5 See the *Central Government Supply Estimates: Main Supply Estimates: Introduction* (HC Paper 514 (2009-10)) section 2(8); and Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 865-866.

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### **1034. Supplementary estimates.**

Since the ordinary estimates of expenditure have to be framed some months before the commencement of the year to which they relate, many departments are compelled as the year proceeds to present further estimates for expenditure which could not have been foreseen when the original estimates were prepared. Some of these fresh demands can be foreseen in time to be submitted to the House of Commons before the consideration of the main estimates has been concluded. Such supplementary or additional grants may be included in an Appropriation Act passed before the House rises in the summer<sup>1</sup>. Other demands cannot be foreseen until later in the year and further batches of supplementary estimates are usually presented in November or December and in February or March of each year. For convenience, the three types of supplementary estimates are usually referred to as the summer, winter and spring supplementaries. Winter supplementary estimates are normally sanctioned by the House shortly after presentation; spring supplementary estimates must be sanctioned some days before the end of the financial year<sup>2</sup>. Separate Consolidated Fund Bills<sup>3</sup> are presented, but both winter and spring supplementary estimates are normally included in the Appropriation Act of the ensuing year.

1 See PARA 1053; and Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 869.

2 See PARA 1047.

- 3 A to Consolidated Fund Bills see PARA 1052.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(2) PUBLIC EXPENDITURE/(ii) Supply Estimates/1035. Votes on account.

### **1035. Votes on account.**

Owing to the fact that the financial year ends on 31 March and that, with due regard to departmental efficiency or Treasury control, the estimates for the following year cannot be ready for presentation before February or March, it is obviously impossible for the House of Commons to grant the whole of the annual supplies demanded by these estimates before 1 April. At the same time, Ministers of the Crown must be supplied with money for the purpose of carrying on the government of the country. Therefore, as a matter of practice, Parliament is obliged every year to grant in advance some of the money which is demanded by the Crown for the expenses of the various departments before the whole of the estimates for the year have been agreed to by the House of Commons. In recent years the votes on account have represented approximately 45 per cent of the total of the main estimate.

According to established usage, demands for votes on account are restricted to such services as have received the sanction of Parliament, but provision may also be made in respect of a service for which Parliament has passed specific legislation or in respect of which specific legislation is currently before Parliament. A dissolution of Parliament may render further votes on account necessary, but recently in such conditions the House has truncated its procedure and completed the business of supply before the election<sup>1</sup>.

- 1 As to votes on account see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 868-869.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(2) PUBLIC EXPENDITURE/(ii) Supply Estimates/1036. Ministry of Defence Votes A.

### **1036. Ministry of Defence Votes A.**

In addition to the ordinary defence estimates<sup>1</sup>, the Secretary of State for Defence presents each year in February Votes A for the navy, army and air force. These seek parliamentary authority for the maximum number of personnel to be maintained for service with the armed forces for the ensuing financial year<sup>2</sup>. The numbers so authorised are included in an Appropriation Act<sup>3</sup>.

- 1 See PARA 1033.  
2 See eg, for the year ending 31 March 2010, HC Paper 117 (2008-09).  
3 As to Appropriation Acts see PARA 1053.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(2) PUBLIC EXPENDITURE/(ii) Supply Estimates/1037. Revised estimates.

### **1037. Revised estimates.**

If it proves necessary to vary the terms of a vote or to reduce the amount demanded, the original estimate is withdrawn and a revised estimate presented. This can only be done before the original estimate is voted. According to modern practice it is rare to present a revised estimate for an increased amount<sup>1</sup>.

1 For an example see the revised estimate for export guarantees for 1972-73 (HC Paper 198 (1972-73)).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(2) PUBLIC EXPENDITURE/(ii) Supply Estimates/1038. Excess votes.

### **1038. Excess votes.**

If a department exceeds in any year the amount of money which Parliament has allowed it to spend, it must obtain a vote of the House of Commons for the extra expenditure<sup>1</sup>. This is obtained by means of an additional grant, called an excess vote, which should be sanctioned by Parliament as soon as possible after the excess of expenditure has been ascertained<sup>2</sup>.

1 See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 870-871.

2 Before the estimate for such a grant is presented to the House of Commons, the demand for the excess grant must be brought before the Committee of Public Accounts (see PARAS 986, 1058) and receive its sanction: see HC Standing Orders (Public Business) (2009) no 55(3)(c). For the Treasury statement of excesses for the year ending 31 March 2008 see HC Paper 215 (2007-08).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(2) PUBLIC EXPENDITURE/(ii) Supply Estimates/1039. Votes of credit.

### **1039. Votes of credit.**

In times of national emergency it may be impossible or against the national interest for a government to present detailed estimates to the House of Commons. In such circumstances the House was asked to grant both votes of credit and supplementary votes of credit in each year of the 1914-18 and 1939-45 wars<sup>1</sup>. A vote of credit is presented as an estimate and the money voted is available only for the financial year in which the grant is made<sup>2</sup>.

1 See the General Index to the Journals of the House of Commons for the years 1911-20, p 493, and for the years 1939-50, p 271; and Erskine May's Parliamentary Practice (23rd Edn, 2004) p 872.

2 The procedure whereby the questions on voting estimates are put without debate does not apply to votes of credit or to votes for supplementary or additional estimates for war expenditure: see HC Standing Orders (Public Business) (2009) no 55(6); and PARA 1045.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(i) In general/1040. Crown's demand for supplies.

### **(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS**

#### **(i) In general**

##### **1040. Crown's demand for supplies.**

In the Speech from the Throne at the opening of each session of Parliament<sup>1</sup> the monarch refers the estimates for the ensuing year to the consideration of the House of Commons<sup>2</sup>, and it is the duty of that House to examine them and to grant the money which is required to carry on the government of the country<sup>3</sup>.

1 As to the Queen's speech see PARA 1009.

2 The conventional formula for this purpose was varied during the 1914-18 and 1939-45 wars so as to cover demands for war expenditure: see 170 Commons Journals 8; 195 Commons Journals 5.

3 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 853-854.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(i) In general/1041. Exceptional or special grants.

##### **1041. Exceptional or special grants.**

In the course of a session the Crown may find it necessary to demand from Parliament a grant for some particular purpose which is thought of too much importance to be included in the ordinary supplementary estimates<sup>1</sup>. Such demands usually relate to the maintenance of the dignity and well-being of the Crown<sup>2</sup>, or the reward of persons who have rendered distinguished service to the Commonwealth<sup>3</sup>. In that event the Crown sends a message under the sign manual which is conveyed to each House by a Minister of the Crown. In the House of Lords an address is moved in reply stating the willingness of the House to concur in such measures as may be suitable. In the House of Commons no address is made in reply but the demand is brought before the House either in the form of a resolution with the monarch's recommendation or as a grant to be voted under the business of supply<sup>4</sup>. In the former case it is authorised by special Act whereas in the latter it is included in and authorised by the Appropriation Act<sup>5</sup>.

1 As to supplementary estimates see PARA 1034.

2 207 Commons Journals 236.

3 174 Commons Journals 282.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 872.

5 As to the Appropriation Act see PARA 1053.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(i) In general/1042. Supply and ways and means.

## **1042. Supply and ways and means.**

Since 1982 provision has been made for supply estimates to be debated on three days each session<sup>1</sup>.

A ways and means resolution may be made in the House of Commons without notice on any day, as soon as an address has been agreed to in answer to Her Majesty's Speech<sup>2</sup>.

1 See HC Standing Orders (Public Business) (2009) no 54; and see PARA 1043. As to the distinction between 'supply' and 'ways and means' see PARA 1025.

2 HC Standing Orders (Public Business) (2009) no 51(1). As to Her Majesty's speech see PARA 1009.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(ii) Supply/1043. Debate on estimates.

## **(ii) Supply**

### **1043. Debate on estimates.**

The House of Commons has the opportunity to consider individual supply estimates recommended for debate by the Liaison Committee on three days in each parliamentary session, one of which may be taken in the form of two half days<sup>1</sup>. Provision is also made for the timing of the consideration of estimates, and the deferral of any decisions on estimates days until the moment of interruption<sup>2</sup>.

1 See HC Standing Orders (Public Business) (2009) no 54(1). Such days are set down by the Liaison Committee under no 145(3), and must be taken before 5 August: see no 154(1). The three days selected for consideration of estimates may coincide with the days on which other estimates are voted without debate (see PARA 1045), but need not necessarily do so. As to the Liaison Committee see PARA 989. In the past, so-called 'Supply Days' debates took place not on the detail of estimates but mainly on topics chosen by the Opposition. Opportunities for opposition debates are now expressly provided for: see no 14(2); and PARA 973.

2 See HC Standing Orders (Public Business) (2009) no 54(2)-(5). As to the moment of interruption see PARA 963. As to voting of estimates not chosen for debate see PARA 1045.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(ii) Supply/1044. Motions and amendments.

### **1044. Motions and amendments.**

Although it is for the Liaison Committee<sup>1</sup> to recommend topics for debates on estimates days, it is for ministers formally to move the motions on which debate takes place<sup>2</sup>. To these motions amendments may be moved. In accordance with the general rules of the House of Commons relating to financial procedure, no amendment to a motion for the grant of a sum is in order which seeks to increase the total sum to be granted<sup>3</sup>.

- 1 As to the Liaison Committee see PARA 989.
- 2 As to the right of the Crown to initiate the financial work of Parliament see PARA 1024.
- 3 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 874. Amendments to reduce sums are occasionally tabled: see eg 258 Commons Journals 642.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(ii) Supply/1045. Voting of outstanding estimates.

#### **1045. Voting of outstanding estimates.**

Provision is made for all questions on outstanding estimates to be decided without debate at the moment of interruption<sup>1</sup>, for which at least two days' notice must be given<sup>2</sup>. The procedure covers not only questions on any motion authorising amounts and limits on appropriation in aid set out in outstanding estimates, but also for any outstanding vote relating to numbers for defence services for the current financial year<sup>3</sup>. Where the procedure is applied to supplementary estimates these must have been presented 14 days previously<sup>4</sup>. It is possible for members to vote against any of the questions put under it, but no amendment may be proposed, nor is it possible to vote against any of the individual items or sub-totals which go to make up the total amount to which the procedure is applied<sup>5</sup>.

- 1 See HC Standing Orders (Public Business) (2009) no 55. As to those estimates which are subject to debate see PARA 1043. As to the moment of interruption see PARA 963.
- 2 HC Standing Orders (Public Business) (2009) no 55(5).
- 3 See HC Standing Orders (Public Business) (2009) no 55(1)(a), (b). As to defence services see PARA 1036.
- 4 See HC Standing Orders (Public Business) (2009) no 55(2)(b), (3)(b). The standing order does not apply to votes of credit or votes for supplementary or additional estimates for war expenditure: no 55(6). In the case of excess votes (see PARA 1038) the Committee of Public Accounts must have reported that it sees no objection before the procedure can be applied: no 55(3)(c). As to the Committee of Public Accounts see PARA 986.
- 5 See Erskine May's Parliamentary Practice (23rd Edn, 2009) p 876.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(ii) Supply/1046. Forms of resolutions.

#### **1046. Forms of resolutions.**

Each estimate which is laid before the House of Commons is moved in the form of a resolution for a grant of money to the Crown, and must state the combined outstanding net resource requirement for the requests made in the estimates, the time during which the grant is valid, and the particular service or services for which the grant is required<sup>1</sup>. When a resolution has been agreed to, the sum voted is included in the next Consolidated Fund Bill and before the end of the session is appropriated by an Appropriation Bill<sup>2</sup>.

- 1 See Erskine May's Parliamentary Practice (23rd Edn, 2009) p 874.
- 2 As to Consolidated Fund Bills see PARA 1052; and as to Appropriation Bills see PARA 1053.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(ii) Supply/1047. Timetable for voting estimates.

#### **1047. Timetable for voting estimates.**

In order to enable the government to obtain the money it needs within a certain time, three dates are laid down for the application of the procedure for voting of estimates<sup>1</sup>. The first is a day not later than 6 February, which ensures that the winter supplementary estimates for the current financial year and the votes on account for the forthcoming financial year are obtained<sup>2</sup>. The second is a day not later than 18 March, which ensures that Votes A, the spring supplementaries, and any excess votes, are obtained before the end of the current financial year<sup>3</sup>. The third is a day not later than 5 August when the question is put on all outstanding defence and civil votes<sup>4</sup>.

1 See PARA 1045.

2 See HC Standing Orders (Public Business) (2009) no 55(2). As to the winter supplementary estimates see PARA 1034. As to votes on account see PARA 1035.

3 See HC Standing Orders (Public Business) (2009) no 55(3). As to Votes A see PARA 1036. As to the spring supplementaries see PARA 1034. As to excess votes see PARA 1038.

4 See HC Standing Orders (Public Business) (2009) no 55(4).

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#### **1048. Public expenditure generally.**

In modern times, while detailed scrutiny of the estimates is largely perfunctory, attention has focused more on the longer term expenditure plans of the government. The main estimates as published are generally consistent with the plans for the next three financial years announced in outline at the time of the budget and set out in greater detail in departmental annual reports published in the early part of the year. These annual reports are frequently studied by departmental select committees<sup>1</sup>. A motion generally indorsing the government's public expenditure plans is frequently agreed to by the House after decisions have been reached on the budget resolutions.

1 See PARA 987.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(iii) Ways and Means/1049. Scope of ways and means.

#### **(iii) Ways and Means**

### **1049. Scope of ways and means.**

The principal functions of the House of Commons when considering ways and means are (1) to consider and vote the taxes necessary for the supplies of the year; and (2) to authorise payments into the Consolidated Fund or the National Loans Fund even if they do not accrue during the current year<sup>1</sup>.

A ways and means resolution is a necessary preliminary to the imposition of a new tax, the continuation of an expiring tax, an increase in the rate of an existing tax or an extension of the incidence of a tax so as to include persons not already payers<sup>2</sup>. Ways and means resolutions have also been required for the repeal or reduction of alleviations of taxation and for authorising the Crown to raise money by the issue of a loan<sup>3</sup>.

1 Authority for payments into the Consolidated Fund or National Loans Fund, when such payments are of minor importance and incidental to the exercise of powers which involve expenditure, is, for the sake of convenience, frequently given by the resolution of the House which authorises that expenditure: see eg 224 Commons Journals 221. As to the Consolidated Fund and National Loans Fund see PARA 1028 et seq.

2 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 897.

3 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 898.

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### **1050. The budget.**

The annual financial statement by the Chancellor of the Exchequer, commonly called 'the budget'<sup>1</sup>, is the most important business of ways and means<sup>2</sup>. In his speech on that occasion, the Chancellor informs the House of Commons with regard to the financial results of the previous year, reviews the general economic state of the country and makes an estimate of the probable income and expenditure of the coming year, announces the government's longer term expenditure plans, explains the intentions of the government with regard to the continuance, the increase or the reduction of existing taxes, and sets out the proposals of the government if it finds it necessary to impose new taxes<sup>3</sup>.

1 The word 'budget' is derived from the French 'bougette' and Latin 'bulga' (a small bag), used for the purpose of carrying papers or accounts. A statement in the nature of the present budget has been made annually in the House of Commons since 1688.

2 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 909.

3 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 909. In recent years a pre-budget 'Autumn Statement' has been given to the House in November, foreshadowing the budget the following March.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/6. THE FINANCIAL WORK OF PARLIAMENT/(3) FINANCIAL PROCEDURE OF THE HOUSE OF COMMONS/(iii) Ways and Means/1051. Budget resolutions.

### **1051. Budget resolutions.**

The financial proposals of the government are carried in the form of resolutions moved by the Chancellor of the Exchequer or some other minister. The practice following the budget statement is for a general debate to take place on the first ways and means resolution, normally that entitled 'amendment of the law', and for the questions to be put on this, and then forthwith on all the other resolutions at the end of the last day of the budget debate<sup>1</sup>.

However, provision must first be made for giving immediate provisional validity to those proposals which are to come into force, many of them on budget day itself, before specific statutory authority can be obtained. This is done under the terms of the Provisional Collection of Taxes Act 1968 which provides that provisional validity may be given to specified budget resolutions by means of one or more motions<sup>2</sup> made immediately after the conclusion of the budget speech and the question is put on it forthwith<sup>3</sup>. The budget resolutions thus given provisional force must be agreed to within the next ten days on which the House of Commons sits for their validity to be continued<sup>4</sup>. Whereas the Provisional Collection of Taxes Act 1968 does not apply to new taxes, in relation to income tax, corporation tax, value added tax, climate change levy, insurance premium tax, aggregates levy, petroleum revenue tax, stamp duty reserve tax, stamp duty land tax, supplementary petroleum duty, elective employment tax and customs and excise duties it provides for the renewal for a further period of any tax in force, with or without modifications, and for the variation or abolition of any existing tax<sup>5</sup>. The Act also provides for securing new duties of customs and excise<sup>6</sup>.

Resolutions agreed to in November or December, which contain a declaration that it is expedient in the public interest that they should have statutory effect under the provisions of the Provisional Collection of Taxes Act 1968, are valid until 5 May in the next calendar year<sup>7</sup>, such resolutions agreed to in February or March in any year, are valid until 5 August in the same calendar year<sup>8</sup>, and such resolutions agreed to at other times of the year are valid for a period of four months after the date on which they are expressed to take effect or, if no such date is expressed, after the date on which they are agreed to<sup>9</sup>. A resolution ceases to have statutory effect unless, within the next 30 days on which the House sits after the resolution is agreed to, either a bill renewing, varying or abolishing the tax is read a second time by the House or a bill is amended by the House in committee or on report, or by any public bill committee, so as to include provision for the renewal, variation or abolition of the tax<sup>10</sup>. The resolution also ceases to have statutory effect in the event of a dissolution or prorogation of Parliament<sup>11</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 910.

2 See the Provisional Collection of Taxes Act 1968 s 5(1) (amended by the Finance Act 1993 ss 205(6), 213, Sch 23 Pt VI). See also **INCOME TAXATION** vol 23(1) (Reissue) PARA 20.

3 See HC Standing Orders (Public Business) (2009) no 51(2).

4 See the Provisional Collection of Taxes Act 1968 s 5(3).

5 See the Provisional Collection of Taxes Act 1968 s 1(1), (2)(a); and **INCOME TAXATION** vol 23(1) (Reissue) PARA 18. As to the provisional collection of corporation tax see **INCOME TAXATION** vol 23(1) (Reissue) PARA 6; and as to the provisional collection of value added tax see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 4.

6 See the Provisional Collection of Taxes Act 1968 s 3 (amended by the Customs and Excise Management Act 1979 s 177(1), Sch 4 paras 4, 5, 12, Table, Pt I; and by virtue of the Criminal Justice Act 1982 ss 38, 46); and **CUSTOMS AND EXCISE**.

7 See the Provisional Collection of Taxes Act 1968 s 1(3)(a) (amended by the Finance Act 1993 s 205(4)).

8 See the Provisional Collection of Taxes Act 1968 s 1(3)(aa) (added by the Finance (No 2) Act 1997 s 50(1), (3)).

9 See the Provisional Collection of Taxes Act 1968 s 1(3)(b).

10 Provisional Collection of Taxes Act 1968 s 1(4) (amended by the Finance Act 1968 s 60; the Finance Act 1993 s 205(5); and the Finance Act 2007 s 112(1)).

11 See the Provisional Collection of Taxes Act 1968 s 1(5)(c). As to the dissolution or prorogation of Parliament see PARA 1018 et seq.

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## **(iv) Financial Legislation**

### **1052. Consolidated Fund Bills.**

A bill which has been introduced to authorise the issue of money out of the Consolidated Fund is known as a Consolidated Fund Bill<sup>1</sup>. One such bill must be passed before the close of the financial year to authorise the necessary issues of money for the opening period of the ensuing financial year, and to make good any supplementary sums for the expiring financial year. Consolidated Fund Bills are usually passed in December and March and may be passed at other times during the course of the year if required by the exigencies of the public service<sup>2</sup>.

As soon as a Consolidated Fund Bill has received the royal assent, the money which it authorises to be expended for the public service may be issued out of the Consolidated Fund<sup>3</sup>.

1 As to the necessity for parliamentary authorisation to the issue of money out of the Consolidated Fund see PARA 1028.

2 Proceedings on Consolidated Fund Bills in the House of Commons are purely formal. The question on second reading is put forthwith, no order is made for the committal of the bill, and the question for third reading is also put forthwith: HC Standing Orders (Public Business) (2009) no 56.

3 If it authorises the Treasury to issue money out of the Consolidated Fund under the terms of the Exchequer and Audit Departments Act 1866 and the Government Resources and Accounts Act 2000 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), to meet the cost of the relevant public services: see PARA 1028.

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### **1053. Appropriation Acts.**

Traditionally, when all the supplies for the service of the financial year have been granted and agreed to by the House of Commons, a further and final Consolidated Fund Bill<sup>1</sup> to authorise the issue from the Consolidated Fund<sup>2</sup> of the sums still required and to appropriate all the money issued by it, and by the preceding Consolidated Fund Bills of the session, was passed, and known as the Appropriation Act<sup>3</sup>. Since 2004, a revised procedure has been adopted by the government whereby two Appropriation Bills are presented to Parliament each year, one in March dealing with the previous financial year, the other in July dealing with the current main estimates<sup>4</sup>.

In the Appropriation Acts are stated the sums authorised to be issued from the Consolidated Fund and the appropriation of the grants detailed in the Schedules to the Act. In these are set

out the objects for which grants have been made and the total sums granted for those objects since the previous relevant Appropriation Act. In addition to the sums granted out of the Consolidated Fund, there are specified for each vote the total sums which may be applied out of money directed to be applied as appropriations in aid<sup>5</sup>.

Proceedings on Appropriation Bills in the House of Commons are purely formal. The question on second reading is put forthwith, no order is made for the committal of the bill, and the question for third reading is also put forthwith<sup>6</sup>.

1 As to Consolidated Fund Bills see PARA 1052.

2 As to the Consolidated Fund see PARA 1028.

3 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 878.

4 See HM Treasury, *Managing Resources: Full Implementation of Resources Accounting and Budgeting* (2001); and the *First Report of the Procedure Select Committee* (HC Paper 393 (2003-2004)).

5 See PARA 1032. In an Appropriation Act, Parliament sanctions and controls the sums receivable as appropriations in aid, and thereby gives statutory approval to services in return for which those sums are received: *China Navigation Co Ltd v A-G* [1932] 2 KB 197 at 218, 235, CA.

6 See HC Standing Orders (Public Business) (2009) no 56.

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### **1054. Finance Bills.**

When all the resolutions proposed by the government for the imposition or alteration of taxes have been agreed to by the House of Commons an order is made for a bill embodying them to be brought in<sup>1</sup>. The annual Finance Bill, introduced in pursuance of this order, contains practically all the financial arrangements of the year for the provision of revenue<sup>2</sup>. In both Houses, the various stages of the Finance Bill are the same as those of any other public bill, but in the House of Commons, as the bill is brought in upon a financial resolution, no two stages of it may be taken on the same day<sup>3</sup>, and it is not permissible for any member to propose an amendment which, if carried, would augment the charges which have been agreed to by the House<sup>4</sup>.

1 When the question has been decided on the first of several ways and means motions on which a bill is to be brought in, the question on each further such motion is put forthwith: see HC Standing Orders (Public Business) (2009) no 51(3).

2 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 913 et seq. The practice dates from 1861, following the House of Commons resolution after the rejection by the House of Lords of the Paper Duty Repeal Bill 1860: see 115 Commons Journals 360; and PARA 821 note 1.

3 This rule is, however, usually relaxed by order of the House in relation to report stage and third reading: see **PARLIAMENT** vol 34 (Reissue) PARA 770.

4 For detailed rules on amendments see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 914 et seq. As to bills certified as money bills, and the position of the House of Lords with respect to such bills, see PARA 827.

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## **(v) Public Accounts**

### **1055. Audit and examination of public accounts.**

The accounts of all the departments of the government which are entrusted with the spending of money must be audited and examined by the Comptroller and Auditor General, whose duty it is to see that any money which has been granted by Parliament has been used for the purposes for which it was intended<sup>1</sup>. He also has power to carry out examinations into the economy, efficiency and effectiveness of public departments and other bodies mainly supported by public funds<sup>2</sup>.

<sup>1</sup> See Government Resources and Accounts Act 2000 ss 5-7; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 716. As to the Comptroller and Auditor General see PARA 945. The government has proposed changes to the corporate entity of the National Audit Office, and the role of the Comptroller and Auditor General: see the Constitutional Reform and Governance Bill (HC Paper (2008-09) no 142) Pt 7.

<sup>2</sup> See the National Audit Act 1983 ss 6-9; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 717.

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### **1056. Accounting system.**

The financial year ends on 31 March<sup>1</sup>. The accounting system has regard not to the date on which a payment becomes due but to that on which it is made. Thus payment of a bill for services completed before 31 March, but which is not presented until 1 April, falls into the financial year subsequent to that in which the expense was incurred. The Comptroller and Auditor General will call the attention of the Committee of Public Accounts<sup>2</sup> to any case in which he has reason to believe payment was deliberately postponed to avoid an excess vote or hastened to avoid an unduly large surrender.

<sup>1</sup> See the Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1) (amended by the Family Law Reform Act 1987 s 33(1), (4), Sch 2 para 74, Sch 4; and the Legislative and Regulatory Reform Act 2006 s 25(2)).

<sup>2</sup> As to the Comptroller and Auditor General see PARA 945; and as to the Committee of Public Accounts see PARA 986.

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### **1057. Final statement of audited expenditure.**

Departmental cheques or payable orders may be cashed by the recipient within three months of issue. A department cannot therefore know for certain until 30 June<sup>1</sup> what is its exact expenditure, and departments operating abroad may not know until much later.

1    le three months after the end of the financial year: see PARA 1056.

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### **1058. Submission of accounts to the Committee of Public Accounts.**

The reports on the accounts of each government department<sup>1</sup> are presented to the House of Commons and are then considered by the Committee of Public Accounts, whose duty it is to examine the accounts and to report upon them to the House<sup>2</sup>.

1    See PARA 1055.

2    See HC Standing Orders (Public Business) (2009) no 148: see PARA 986. For the constitution and procedure of select committees see PARA 979 et seq. The committee takes a particular interest in any excesses: see generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 784-785.

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### **(vi) Recommendation of the Crown and Financial Resolutions**

#### **1059. Incidental expenditure.**

If the objects of a bill when put into effect will cause a charge to be put on public funds, it is proper that the legislation should state whether the charge is to fall directly upon the Consolidated Fund or to be put upon the estimates and so be subjected to annual review. In the first case the legislation will create an effective charge. In the second case, since Parliament will have the opportunity of considering the estimate, no real charge is created, but in 1866 the House of Commons amended its standing orders to include expenditure 'out of moneys provided by Parliament' among those matters requiring the recommendation of the Crown<sup>1</sup>. This recommendation is usually signified in writing to the Clerk of the House and a note indicating that the recommendation has been signified is included in the order paper<sup>2</sup>.

1    See HC Standing Orders (Public Business) (2009) no 48; and PARA 1025.

2    This practice has superseded the former custom by which a minister signified the monarch's recommendation from his place in the House: see the *Report from the Select Committee on Procedure* (HC Paper 122 (1965-66)).

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Recommendation of the Crown and Financial Resolutions/1060. Bills having expenditure as their main object.

### **1060. Bills having expenditure as their main object.**

Where a bill proposed to authorise new expenditure, the procedure on it in the House of Commons formerly depended upon whether the creation of the new charge was the main object of the bill or was only subsidiary to the main purpose. However the procedure now followed is in practice the same in both cases<sup>1</sup>, and a motion authorising the expenditure proposed in the bill is considered in the House after the bill has been read a second time and must be agreed to before the bill is, or in subsidiary cases the relevant clauses are, considered in committee<sup>2</sup>. Bills of which the main object is to create a charge may be brought from the House of Lords but can only be taken up in the House of Commons by a Minister of the Crown<sup>3</sup>.

1 See HC Standing Orders (Public Business) (2009) no 50; and **PARLIAMENT** vol 34 (Reissue) PARA 742. Bills brought in under this standing order are distinguished by a note on the top of the first page: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 891.

2 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 891 et seq.

3 See HC Standing Orders (Public Business) (2009) no 80(b); and PARA 824 note 1.

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### **1061. Procedure upon financial resolutions.**

A financial resolution is not part of the proceedings on a bill and may therefore be taken at any time before the detailed consideration of the provisions of the bill which necessitate the resolution. Although such resolutions are normally considered immediately after the second reading of bills, they have also been considered after presentation and before second reading and at other later stages of bills<sup>1</sup>. It is now provided that when, as is normally the case, a motion authorising expenditure in connection with a bill or on a ways and means motion in connection with a bill is dealt with at the same sitting as that at which the bill has been read a second time, the Speaker puts the question forthwith<sup>2</sup>. When such a motion is made in other circumstances debate is limited to three quarters of an hour<sup>3</sup>.

1 See eg 242 Commons Journals 390; Votes and Proceedings, 30 July 1997.

2 HC Standing Orders (Public Business) (2009) no 52(1)(a).

3 HC Standing Orders (Public Business) (2009) no 52(1)(b).

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### **1062. Definition of a charge upon the revenue.**

Before applying the checks which it has put upon its own power of imposing new burdens upon the revenue, the House of Commons must be satisfied (1) that any charge is new and distinct; (2) that the charge is payable out of the Consolidated Fund or the National Loans Fund; and (3) that the charge is effectively imposed<sup>1</sup>.

1 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 881 et seq.

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## **(4) INTERNATIONAL PARLIAMENTARY ORGANISATIONS**

### **1063. Financing of international parliamentary organisations.**

The Secretary of State must lay before Parliament each financial year<sup>1</sup> a register of those publicly financed international parliamentary organisations which are in receipt of an annual grant-in-aid to fund both British and international secretariats and which draw their membership from both Houses of Parliament<sup>2</sup>. The register must include the name of the organisation and the amount of money allocated to that organisation in that financial year<sup>3</sup>.

1 'Financial year' means the period of 12 months ending with 31 March: Interpretation Act 1978 s 5, Sch 1.

2 International Parliamentary Organisations (Registration) Act 1989 s 1(1). The organisations are the Commonwealth Parliamentary Association and the Inter-Parliamentary Union: s 1(1), Schedule.

3 International Parliamentary Organisations (Registration) Act 1989 s 1(2).

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/7. BROADCASTING/1064. House of Lords.

## **7. BROADCASTING**

### **1064. House of Lords.**

The proceedings of the House of Lords are recorded both for radio and for television. Sound broadcasting has taken place since 1978<sup>1</sup>. Televising began experimentally in 1985<sup>2</sup> and was made permanent in 1986<sup>3</sup>. Normally the proceedings of select committees (when those proceedings are held in public) may also be recorded for television if there is sufficient demand from broadcasters for the footage<sup>4</sup>. Proceedings of both the whole House and committees have been broadcast on the internet permanently since 2003<sup>5</sup>.

Arrangements for broadcasting the proceedings of the House are overseen by the Information Committee<sup>6</sup>. The House requires broadcasters to use their good judgement in doing nothing that would 'undermine the dignity of the House or of any lord'<sup>7</sup>. Day to day supervision of coverage and adherence to the rules laid down by the House on broadcasting is delegated to the Director of Parliamentary Broadcasting<sup>8</sup>.

1 See 209 Lords Journals 247, where in 1976 public sound broadcasting of proceedings in the House was welcomed by the Lord Privy Seal and agreed to. See also Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 270-271; and R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) paras 12-168-12-170.

2 See the *First Report of the Select Committee on Sound Broadcasting* (1984-85); 218 Lords Journals 38.

3 le by a resolution of the House on 12 May 1986 (219 Lords Journals 320).

4 The House has granted a committee the power to refuse to televise proceedings to which visitors are admitted: see 626 HL Official Report (5th series), 12 July 2001, col 1181 (Animals in Scientific Procedures Committee).

5 In 2000 the House of Commons Broadcasting Committee recommended, 'that the relevant officials of both Houses actively pursue webcast potential, and to seek those areas where both Houses can act together in order to ensure that 'access to Parliament' is available to all. The ideal would be for this access to include sound feed and, at least, limited vision coverage, of all public sessions of Committees to the House to be available via the internet': HC Paper 642 (1999-2000). The webcasting of proceedings was begun experimentally in 2002 and is accessible at the date at which this volume states the law at [www.parliamentlive.tv](http://www.parliamentlive.tv).

6 See the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2007). The Information Committee, one of the domestic committees of the House of Lords, more generally considers the House's information and communications services, including the Library and Parliamentary Archives, and is also concerned with bicameral services such as the parliamentary website. The House of Lords Administration and Works Committee considers requests to make programmes about the working of the House: see the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2007).

7 See *First Report of the Select Committee on Broadcasting* (HL Paper 31 (1990-91)); 224 Lords Journals 308.

8 The Director of Parliamentary Broadcasting is an officer of both Houses of Parliament appointed to monitor adherence to the rules of coverage laid down by the relevant Committees of each House: see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 207-271.

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BROADCASTING/1065. House of Commons.

## 1065. House of Commons.

The proceedings of the House of Commons are recorded both for radio and for television. Sound broadcasting has taken place since 1978<sup>1</sup>. Televising began experimentally in 1989<sup>2</sup> and was made permanent in 1990<sup>3</sup>. Sittings in Westminster Hall and the proceedings of select committees (when those proceedings are held in public) may be recorded for television if there is sufficient demand from broadcasters for the footage. Proceedings have been broadcast on the internet permanently since 2003<sup>4</sup>.

Arrangements for broadcasting the proceedings of the House are overseen by the Administration Committee<sup>5</sup>. Certain guidelines apply to the production of footage of the proceedings of the House and its committees<sup>6</sup>.

The operator agreement which exists between the Parliamentary Broadcasting Unit Limited and the private operating company contracted to produce the footage designates these guidelines as the 'rules of coverage' in relation to the House of Commons<sup>7</sup>.

1 See 232 Commons Journals 519 and (for the conditions on which sound broadcasting is to be carried out) 233 Commons Journals 452. Generally see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 270-271; and R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 2-103 et seq.

2 245 Commons Journals 409.

3 247 Commons Journals 362.

4 See PARA 1064 note 5.

5 See PARA 989. The committee's role includes supervising services provided to the public including the parliamentary website. Originally each House of Parliament had its own Select Committee on Broadcasting. The present arrangements on broadcasting in each House include powers for the relevant committees to meet concurrently and to communicate with each other.

6 See *First Report of the Broadcasting Committee* (HC Paper 876 (2002-03)) for the present rules. In general terms, the guidelines encourage pictures which give a 'full, balanced, fair and accurate account of proceedings', and shots are prohibited which show the press and public galleries, the officers of the House, the doorkeepers, members' or officers' papers, and the area behind the Speaker's Chair. Close-up shots are discouraged, and split screen shots and shots panning along the benches are not allowed. In cases of grave disorder the camera should focus on the Speaker until order is restored.

7 See PARA 1066.

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BROADCASTING/1066. Parliamentary Broadcasting Unit.

### **1066. Parliamentary Broadcasting Unit.**

The Parliamentary Broadcasting Unit Limited ('PARBUL'), set up in 1991 following recommendations by the Broadcasting Committees of both Houses of Parliament<sup>1</sup>, facilitates the production and use of footage of the proceedings of both Houses. PARBUL is funded by shareholdings from the main broadcasting companies who wish to use the footage which is produced. Representatives of those companies sit on its board, as do representative members from each House. The Director of Parliamentary Broadcasting<sup>2</sup> is also a member of the board.

Footage is produced by a separate private company, working under a renewable contract awarded by PARBUL following a competitive tendering process.

The footage which is produced may be used free of charge by the shareholder broadcasters for their programmes. Thus the BBC regularly broadcasts parliamentary proceedings and special events, and its BBC Parliament channel does so continuously. Other broadcasters may also have access to the signals on payment of a fee. PARBUL has sales rights in the signals for broadcasting use for 15 days from the origination of the signals.

The Parliamentary Recording Unit (the archive) controls rights for non-broadcast use and for broadcast use by non-shareholder broadcasters after 15 days. Footage may be used for news, current affairs and documentary programmes. It may be included in party political and party election broadcasts in a limited way. It may not be used in programmes of satire or light entertainment.

All footage which is produced is at present archived. Initially it is kept by the Parliamentary Recording Unit which makes copies available at a charge, and after two years it is then transferred to the National Film Archive.

<sup>1</sup> In relation to the House of Lords see the *First Report of the Select Committee on Broadcasting* (HL Paper 31 (1990-91)); 224 Lords Journals 308; and in relation to the House of Commons see the *First Report of the Select Committee on Broadcasting* (HC Paper 11 (1990-91)). See Erksine May's *Parliamentary Practice* (23rd Edn, 2004) pp 270-271; and R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) paras 2-105-2-107.

<sup>2</sup> See PARA 1064 note 8.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/8. MEMBERS' INTERESTS AND CONDUCT/(1) INTERESTS AND CONDUCT IN THE HOUSE OF LORDS/1067. Interests and the Code of Conduct in the House of Lords.

## 8. MEMBERS' INTERESTS AND CONDUCT

### (1) INTERESTS AND CONDUCT IN THE HOUSE OF LORDS

#### 1067. Interests and the Code of Conduct in the House of Lords.

It has long been the practice that lords should declare any direct pecuniary interest in subjects on which they speak, and that lords should not advocate, promote or oppose in the House any bill or subordinate legislation in relation to which they are acting or have acted personally for a specific fee or reward, nor should they vote on private bills in which they have a direct pecuniary interest<sup>1</sup>. In 1995 the House adopted more restrictive guidance incorporating the principles that lords should act always on their personal honour, and never accept any financial inducement as an incentive or reward for exercising parliamentary influence<sup>2</sup>. This was followed in 2000 by a report from the Committee on Standards in Public Life whose recommendations for a Code of Conduct were adopted by the House of Lords in 2001, entering into effect on 31 March 2002<sup>3</sup>. A new Code of Conduct was adopted by the House on 30 November 2009, and the following terms take effect from 1 April 2010<sup>4</sup>.

The Code of Conduct recognises that membership of the House of Lords is not an office and does not constitute employment, that most members' primary employment is or has been outside Parliament, and that in discharging their parliamentary duties members will draw substantially on their experience and expertise gained outside Parliament<sup>5</sup>. The Code applies to all members of the House of Lords who are not either on leave of absence, suspended from the service of the House, or statutorily disqualified from active membership<sup>6</sup>.

The purpose of the Code is to:

- 98 (1) provide guidance for members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties (it does not extend to members' performance of duties unrelated to parliamentary proceedings or to their private lives)<sup>7</sup>;
- 99 (2) provide the openness and accountability necessary to reinforce public confidence in the way in which members of the House of Lords perform their parliamentary duties<sup>8</sup>.

Members of the House are required to comply with the Code, and to sign an undertaking to abide by the Code as part of the ceremony of taking the oath upon introduction and at the start of each Parliament<sup>9</sup>.

In the conduct of their parliamentary duties, members must base their actions on consideration of the public interest, and resolve any conflict between their personal interest and the public interest at once, and in favour of the public interest<sup>10</sup>. The Code reiterates the requirements that members should always act on their personal honour and must never accept or agree to accept any financial inducement as an incentive or reward for exercising parliamentary influence<sup>11</sup>. Members must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services<sup>12</sup>, nor act as paid advocates in any proceeding of the House<sup>13</sup>. However, members are not otherwise debarred from participating in proceedings where they may have relevant financial or non-financial interests, so long as they are declared fully<sup>14</sup>.

Members are required to observe the seven principles of conduct identified by the Committee on Standards in Public Life<sup>15</sup>, and these principles will be taken into consideration when any allegation of breaches of the provisions in other sections of the Code is under investigation<sup>16</sup>. Members must also act in accordance with any rules agreed by the House in respect of financial support for members of the facilities of the House<sup>17</sup>.

A Lords Commissioner for Standards is appointed to investigate allegations of a breach of the Code or the rules governing members' financial support or use of parliamentary facilities<sup>18</sup>. The Commissioner reports his findings after an investigation to the Sub-Committee on Lords' Interests, which reviews the Commissioner's findings and, where appropriate, recommends a disciplinary sanction to the Committee for Privileges<sup>19</sup>. Members have a right of appeal to that Committee against both the Commissioner's findings and any recommended sanction<sup>20</sup>. The Committee for Privileges, having heard any appeal, reports its conclusions and recommendations to the House, which makes the final decision on the matter<sup>21</sup>.

The Commissioner, the Sub-Committee on Lords' Interests, and the Committee for Privileges, must act in accordance with the principles of natural justice and fairness when investigating and adjudicating allegations of non-compliance with the Code<sup>22</sup>. A member must co-operate at all stages with any investigation into his conduct by or under the authority of the House<sup>23</sup>, and is expressly prohibited from lobbying a member of the Committee for Privileges or the Sub-Committee on Lords' Interests in a manner calculated or intended to influence the consideration of a complaint<sup>24</sup>.

1 The practice was considered and clarified in the *Second Report from the Procedure Committee* (HL Paper 50 (1989-90)), agreed to by the House on 10 May 1990 (223 Lords Journals 358).

2 See *Fifth Report of the Select Committee on Procedure of the House* (HL Paper 98 (1994-95)). The revised guidance was incorporated in a resolution agreed to by the House on 7 November 1995.

3 See the *Report of the Committee on Standard in Public Life* (2001, Cm 4903) (HL Paper 68 (2000-01)); 626 HL Official Reports (5th Series), 2 July 2001, col 630; 626 HL Official Reports (5th Series), 24 July 2001, col 1849.

4 For the *House of Lords: Code of Conduct* see 715 HL Official Reports (5th Series) cols 645-648. The Sub-Committee on Lords' Interests reviews the Code of Conduct once each Parliament, and its findings along with any recommended changes to the Code are reported to the House: *House of Lords: Code of Conduct* para 24.

5 *House of Lords: Code of Conduct* para 2.

6 *House of Lords: Code of Conduct* para 4. As to leave of absence see PARA 844; as to suspension see PARA 1101; and as to statutory disqualification see PARA 840.

7 *House of Lords: Code of Conduct* para 3(a).

8 *House of Lords: Code of Conduct* para 3(b).

9 *House of Lords: Code of Conduct* paras 5, 8(a).

10 *House of Lords: Code of Conduct* para 7.

11 *House of Lords: Code of Conduct* para 8(b), (c).

12 *House of Lords: Code of Conduct* para 8(d).

13 *House of Lords: Code of Conduct* para 14. That is to say that a member must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward: para 14.

14 *House of Lords: Code of Conduct* para 15. However, members must be especially cautious in deciding to speak or vote in relation to interests that are direct, pecuniary and shared by few others: para 15. As to the test for relevant interests see PARA 1068.

15 See *House of Lords: Code of Conduct* para 9. The principles are selflessness, integrity, objectivity, accountability, openness, honesty, and leadership: see para 9(a)-(g); and *First Report of the Committee on*

*Standards in Public Life* (1995) (Cm 2850) (the Nolan Committee). See generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 12.

16 *House of Lords: Code of Conduct* para 9.

17 *House of Lords: Code of Conduct* para 10(c).

18 *House of Lords: Code of Conduct* para 16. An investigation by the Commissioner is conducted in accordance with procedures set out in the Guide to the Rules: para 16. The Guide to the Rules is published by the House, and is kept under regular review by the Sub-Committee on Lords' Interests, and recommended changes must be reported to the House and will not take effect until agreed by the House: para 25.

19 *House of Lords: Code of Conduct* para 17. As to the Committee for Privileges see PARA 886.

20 *House of Lords: Code of Conduct* para 17.

21 *House of Lords: Code of Conduct* para 18.

22 *House of Lords: Code of Conduct* para 19.

23 *House of Lords: Code of Conduct* para 20.

24 *House of Lords: Code of Conduct* para 21.

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### **1068. Registration and declaration of interests in the House of Lords.**

A register of interests in the House of Lords was first established in 1995<sup>1</sup>, and is governed by the Code of Conduct of the House of Lords<sup>2</sup>. Members of the House of Lords must register all of relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions<sup>3</sup>. Members are responsible for ensuring that their registered interests are accurate and up-to-date, and must register any change in their registered interests within one month of the change<sup>4</sup>. When speaking in the House, or communicating with ministers or public servants, a member must declare any interest which is a relevant interest in the context of the debate or matter under discussion<sup>5</sup>.

The test of a relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a member of the House of Lords discharges his or her parliamentary duties<sup>6</sup>. In the case of registration, this means the member's parliamentary duties in general, and in the case of declaration, it means his or her duties in respect of the particular matter under discussion<sup>7</sup>. Relevant interests include both financial and non-financial interests<sup>8</sup>.

The operation of the Register is overseen by the Sub-Committee on Lords' Interests, assisted by the Registrar of Lords Interests, who is available to advise members, and may consult the Sub-Committee if necessary<sup>9</sup>. A member who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of the Code in that regard<sup>10</sup>. The decision on whether or not to participate in proceedings to which that interest is relevant, however, rests with the member concerned<sup>11</sup>.

1 The first edition of the House of Lords register was ordered to be printed on 14 February 1996 (HL Paper 34 (1995-96)).

2 As to the Code of Conduct of the House of Lords see PARA 1067 note 4.

- 3 *House of Lords: Code of Conduct* para 10(a).
- 4 *House of Lords: Code of Conduct* para 13.
- 5 *House of Lords: Code of Conduct* para 10(b).
- 6 *House of Lords: Code of Conduct* para 11. The test is therefore not whether a member's actions in Parliament will be influenced by the interest but whether a reasonable member of the public might think this to be the case: para 12.
- 7 *House of Lords: Code of Conduct* para 11.
- 8 *House of Lords: Code of Conduct* para 12.
- 9 *House of Lords: Code of Conduct* para 22.
- 10 *House of Lords: Code of Conduct* para 23.
- 11 *House of Lords: Code of Conduct* para 23.

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## **(2) INTERESTS AND CONDUCT IN THE HOUSE OF COMMONS**

### **1069. Declaration and registration of interests in the House of Commons.**

The convention in the House of Commons that a member, before participating in debate, should inform the House of any pecuniary interest relevant to his intervention is a very old one<sup>1</sup>. In 1974, the unwritten convention was replaced by a resolution that in debates or proceedings in the House or committees, and in communications with other members, or with ministers or officials, a member was in terms obliged to disclose any relevant pecuniary interest or benefit, of whatever nature, direct or indirect, that he may have, may have had or may expect to have. Moreover, members were to furnish to a Registrar of Members' Interests, for publication in a register, such particulars of registrable interests as might be required<sup>2</sup>. The purpose of the register was and remains to provide information on any pecuniary interest or other material benefit which a member might receive, and which might reasonably be thought by others to affect his conduct as a member, or influence his actions, speeches or role in Parliament. The then Select Committee on Members' Interests had a general supervisory role over the compilation and maintenance of the register, and considered complaints made in relation to the declaration or registration of interests.

In 1995, the Committee on Standards in Public Life (the Nolan Committee) reported its opinion that there had been a fall in public confidence in the probity of members, which had coincided with an increase in the number of consultancies held by them in relation to their parliamentary work; that the register of members' interests should be more informative; and that members were not always clear what conduct was acceptable. The committee made general and detailed proposals for change<sup>3</sup>.

The House then appointed a select committee on standards in public life, which developed many of the prescriptions in the Nolan Committee's report. In particular, the select committee agreed that an independent Parliamentary Commissioner for Standards should be appointed, that a Code of Conduct for Members should be prepared which should set out the broad principles to be followed, and that paid advocacy by members in the House and elsewhere should be forbidden. The select committee also proposed the appointment of a Select Committee on Standards and Privileges which would supersede the Committee of Privileges

and the Select Committee on Members' Interests<sup>4</sup>. The House considered the committee's conclusions and broadly accepted them<sup>5</sup>.

1 See R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 2-034 et seq.

2 230 Commons Journals 143-44; 231 Commons Journals 102; and for the details of the interests which members are currently obliged to register see PARA 1070.

3 See the *First Report of the Committee on Standards in Public Life* (Cm 2850-I) (1995); and see generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 12.

4 See the *First Report of the Select Committee on Standards in Public Life* (HC Paper 637 (1994-95)); and the *Second Report of the Select Committee on Standards in Public Life* (HC Paper 816 (1994-95)). As to the constitution and powers of the select committee on standards and privileges see PARA 988.

5 251 Commons Journals 469-470, 551-555.

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### **1070. Registrable interests.**

The register of members' interests is published annually and an updated version is available in the office of the Parliamentary Commissioner for Standards<sup>1</sup>. The data on which the register is based are provided by members<sup>2</sup>. There are currently 12 categories of registrable interest:

- 100 (1) remunerated directorships in public and private companies, including directorships which are individually unremunerated but where remuneration is paid through another company in the same group<sup>3</sup>;
- 101 (2) employment, office, trade, profession, or vocation which is remunerated or in which the member has any pecuniary interest<sup>4</sup>;
- 102 (3) in respect of paid employment in the two preceding categories, any provision to clients of services<sup>5</sup>;
- 103 (4) sponsorship by way of (a) any donation received by a member's constituency party or association, or relevant grouping of associations which is linked either to candidacy at an election or to membership of the House; and (b) any other form of financial or material support as a member of Parliament, amounting to more than £1,000 from a single source whether as a single donation or as multiple donations of more than £200 during the course of a calendar year<sup>6</sup>;
- 104 (5) any gift to the member or the member's spouse or partner, or any material benefit, of a value greater than one per cent of the current parliamentary salary from any company, organisation or person within the United Kingdom which in any way relates to membership of the House or to a member's political activity<sup>7</sup>;
- 105 (6) overseas visits (with certain specified exceptions) made by the member or the member's spouse or partner relating to or arising out of membership, where the cost exceeds one per cent of the current parliamentary salary and was not wholly borne by the member or United Kingdom public funds<sup>8</sup>;
- 106 (7) any gift to the member or the member's spouse or partner, or any material advantage, of value greater than one per cent of the current parliamentary salary from or on behalf of any company, organisation or person overseas which in any way relates to membership of the House<sup>9</sup>;

- 107 (8) any land or property which has a substantial value (unless used for the personal residential purposes of the member or the member's spouse or partner) or from which a substantial income is derived<sup>10</sup>;
- 108 (9) interests in shareholdings held by the member personally or with or on behalf of the member's spouse or partner or dependent children in any public or private company or other body which are (a) greater than 15 per cent of the issued share capital of the company or body; or (b) 15 per cent or less of the issued share capital but greater in value than the current parliamentary salary<sup>11</sup>.
- 109 (10) controlled transactions<sup>12</sup> not otherwise recorded in the register<sup>13</sup>;
- 110 (11) any other relevant interest which falls within the main purpose of the register<sup>14</sup> or which the member considers might be thought by others to influence his or her actions in a similar manner, though the member receives no financial benefit<sup>15</sup>;
- 111 (12) family members employed and remunerated through parliamentary allowances<sup>16</sup>.

1 As to the duty to register interests see PARA 1069; and as to the Parliamentary Commissioner for Standards see PARA 1073.

2 Members are required to complete a registration form and submit it to the Parliamentary Commissioner for Standards within one month of their election to the House; they are also required to notify changes in their registrable interests within four weeks of each change occurring: *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) para 13. The purpose of the register is openness, and registration does not imply any wrongdoing: para 12.

3 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 19-23. For these purposes 'remuneration' includes not only salaries and fees but also the receipt of taxable expenses, allowances or benefits: para 19.

4 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 24-26. Membership of Lloyds should be registered under this category.

5 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 27-28. All clients to which personal services are provided should be listed together with the nature of the client's business in each case. Where a member receives remuneration from a company or partnership engaged in consultancy business which itself has clients, the member should list any of those clients to whom personal services or advice are provided, either directly or indirectly.

6 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 29-36.

7 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 37-45.

8 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 46-48.

9 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) para 49.

10 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 50-53. The nature of the property must be indicated.

11 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 54-59.

12 I.e 'controlled transactions' within the meaning of the Political Parties, Elections and Referendums Act 2000 Sch 7A:

13 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 60-62.

14 As to the main purpose of the register see PARA 1069.

15 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 63-64.

16 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) para 65.

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### **1071. Code of Conduct.**

The purpose of the Code of Conduct for members of the House of Commons is to assist members in the discharge of their obligations to the House, their constituents and the public at large, by providing guidance on the standards of conduct expected of members in discharging their parliamentary and public duties, and by providing the openness and accountability necessary to reinforce public confidence in the way in which members perform those duties<sup>1</sup>.

The obligations in the Code are complementary to those which apply to all members by virtue of the procedural and other rules of the House and the rulings of the chair, and those which apply to members failing within the scope of the Ministerial Code<sup>2</sup>.

The Code applies to members in all aspects of their public life, and does not seek to regulate what members do in their purely private and personal lives<sup>3</sup>. It requires members to observe the seven general principles of conduct in public life put forward by the Committee on Standards in Public Life when carrying out their parliamentary and public duties<sup>4</sup>. Members are further expected to observe the following rules<sup>5</sup>:

- 112 (1) members must base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two promptly and in favour of the public interest<sup>6</sup>;
- 113 (2) no member may act as a paid advocate in any proceeding of the House<sup>7</sup>;
- 114 (3) the acceptance by a member of a bribe to influence his or her conduct as a member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any bill, motion, or other matter submitted, or intended to be submitted to the House, or to any committee of the House, is contrary to the law of Parliament<sup>8</sup>;
- 115 (4) in any activities with or on behalf of an organisation with which a member has a financial relationship including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with ministers, members and officials<sup>9</sup>;
- 116 (5) members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain<sup>10</sup>;
- 117 (6) members must at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services<sup>11</sup>;
- 118 (7) members must at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its members generally, into disrepute<sup>12</sup>.

Members are also required to fulfil conscientiously the requirements of the House in respect of the registration of interests<sup>13</sup> and to draw attention to any relevant interest in any proceeding of the House or its committees, or in any communications with ministers, government departments or executive agencies<sup>14</sup>.

The application of the Code is a matter for the House, the Committee on Standards and Privileges<sup>15</sup> and the Parliamentary Commissioner for Standards<sup>16</sup>. Members must cooperate with any investigation into their conduct by or under the authority of the House<sup>17</sup>, and no member may lobby the Committee on Standards and Privileges in a manner calculated or intended to influence the consideration of a complaint of a breach of the Code<sup>18</sup>.

The Code will operate alongside the code of conduct relating to financial interests which must be drawn up by the Independent Parliamentary Standards Authority<sup>19</sup> under the Parliamentary Standards Act 2009<sup>20</sup>.

1 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 1. The original version of the Code of Conduct and the Guide to the Rules (HC Paper 688 (1995-96)) was approved by resolution the House of Commons on 19 July 1995: 252 Commons Journals 527. Its present revised version was approved by the House on 13 July 2005, with the guide to the rules relating to the conduct of members revised on 9 February 2009: HC Paper 735 (2008-09). The Guide amplifies the general statements in the Code by reference to particular circumstances, and gives detailed guidance on the registration of members' interests.

2 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 3. As to the procedural and other rules of conduct in the House see PARA 956 et seq. As to the Ministerial Code see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

3 *Code of Conduct for Members of Parliament* para 2.

4 See *Code of Conduct for Members of Parliament* para 7. As to the general principles see PARA 1067 note 8; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 12.

5 See *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 8.

6 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 9.

7 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 10.

8 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 11.

9 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 12.

10 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 13.

11 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 14.

12 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 15.

13 As to the registration of interests see PARA 1069.

14 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 16.

15 As to the Committee on Standards and Privileges see PARA 988.

16 See *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 17. As to the Parliamentary Commissioner for Standards see PARA 1073.

17 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 18.

18 *Code of Conduct for Members of Parliament* (HC Paper 735 (2008-09)) para 19.

19 As to the Independent Parliamentary Standards Authority see PARA 923.

20 See PARA 1072. The implementation of the code of conduct relating to financial interests under the Parliamentary Standards Act 2009 s 8 is likely to cause substantial revision of the general Code of Conduct with respect to its provisions dealing with financial interests: see PARA 1072 note 4.

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### **1072. Code of conduct relating to financial interests.**

As from a day to be appointed the following provisions have effect<sup>1</sup>. The Independent Parliamentary Standards Authority ('IPSA')<sup>2</sup> must prepare a code of conduct relating to financial interests<sup>3</sup> to be observed by members of the House of Commons<sup>4</sup>. It must review the code regularly and revise it as appropriate<sup>5</sup>. The code (or revision) does not come into effect until it is approved by a resolution of the House of Commons<sup>6</sup>. Such a code must require members to register specified information about specified financial interests in a register maintained by the IPSA<sup>7</sup>, and prohibit a member from:

- 119 (1) by any specified means, advocating or initiating any cause or matter on behalf of any person in consideration of any specified payment or specified benefit in kind<sup>8</sup>; or
- 120 (2) in consideration of any specified payment or specified benefit in kind, urging any other member to advocate or initiate, by any specified means, any cause or matter on behalf of any person<sup>9</sup>.

1 The Parliamentary Standards Act 2009 s 8 is to be brought into force as from a day to be appointed by order under s 14(3). At the date at which this volume states the law no such day had been appointed. Section 8 expires at the end of the period of two years starting with the day on which it comes into force (the 'effective period'): s 15(1), (2). A Minister of the Crown may by order extend, or (on one or more occasions) further extend, the effective period: s 15(3). For further provision with regard to the expiry of provisions see s 15(4), (5).

2 As to the IPSA see PARA 923.

3 I.e. 'the MPs' code of conduct relating to financial interests' as it is in effect for the time being: Parliamentary Standards Act 2009 s 8(2). For these purposes 'financial interest' includes: (1) a benefit in kind; and (2) an indirect financial interest (such as a financial interest of a member of the family of the member concerned): s 8(10).

4 Parliamentary Standards Act 2009 s 8(1). When the code is prepared it will result in two codes for members, one dealing with financial interests, and the prior general Code of Conduct for Members of Parliament (see PARA 1071), and the implementation of s 8 is therefore likely to cause substantial revision of the general Code of Conduct with respect to its provisions dealing with financial interests. However a Minister of the Crown may by order make supplementary, incidental, transitional, transitory or saving provision that its rules about the registration of members' interests have effect for specified purposes as if included by virtue of s 8(7) (see the text to note 7) in the MPs' code of conduct relating to financial interests, and, that its rules about the matters mentioned in s 8(8) have effect for specified purposes as if included by virtue of s 8(8) (see the text to notes 8-9) in the MPs' code of conduct relating to financial interests: s 13(1), (2)(a), (b). For further provision with regard to supplementary, incidental, transitional, transitory or saving provisions see s 13(3)-(10). See also note 1.

5 Parliamentary Standards Act 2009 s 8(3). In preparing or revising the code, the IPSA must consult: (1) the Speaker of the House of Commons; (2) the Leader of the House of Commons; (3) the House of Commons Committee on Standards and Privileges; (4) members of the House of Commons; and (5) any other person the IPSA considers appropriate; s 8(4). 'The Leader of the House of Commons' means the Minister of the Crown who is for the time being designated as Leader of the House of Commons by the Prime Minister: s 12(1). As to the Speaker of the House of Commons see PARAS 931-936. As to the Committee on Standards and Privileges PARA 988. See also note 1.

6 Parliamentary Standards Act 2009 s 8(6). See also note 1. The Speaker must lay the code (or revision) before the House of Commons: s 8(5).

7 Parliamentary Standards Act 2009 s 8(7). The IPSA must publish the register so created in a way it considers appropriate: s 8(9). 'Specified' includes information of a specified description: s 12(1). See also note 1.

8 Parliamentary Standards Act 2009 s 8(8)(a). For these purposes references to a payment or a benefit in kind include references: (1) to a payment or benefit in kind to any person; (2) to an offer or agreement to make a payment or provide a benefit in kind: s 8(11).

9 Parliamentary Standards Act 2009 s 8(8)(b). See also note 1.

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### **1073. Parliamentary Commissioner for Standards.**

The Parliamentary Commissioner for Standards is appointed by standing order<sup>1</sup>. He may be dismissed only following a resolution of the House, moved for by a member of the House of Commons Commission<sup>2</sup>, after the Committee on Standards and Privileges<sup>3</sup> has reported to the House that it is satisfied that the commissioner is unfit to hold his office or unable to carry out his functions<sup>4</sup>.

The principal duties of the commissioner are: (1) to make such arrangements for the compilation, maintenance and accessibility of the register of member's financial interests<sup>5</sup> as may be approved by the select committee on standards and privileges; (2) to provide confidential advice to members and others on matters relating to the registration of individual interests; (3) to advise the Committee on Standards and Privileges and individual members on the interpretation of the Code of Conduct for Members<sup>6</sup> and questions of propriety; and (4) to monitor the operation of the Code and register and make recommendations thereon<sup>7</sup>.

It is also the duty of the commissioner to receive, and if he thinks fit, investigate specific complaints from members of Parliament and from members of the public in respect of the registration or declaration of interests, or other aspects of the propriety of a member's conduct, and to report to the Committee on Standards and Privileges<sup>8</sup>. He may at any time in the course of investigating a complaint, and if so requested by the Committee on Standards and Privileges must, appoint an investigatory panel to assist him in establishing the facts relevant to the investigation<sup>9</sup>.

The commissioner must present a report to the House each year on the exercise of his functions<sup>10</sup>.

Statutory provision has now been made for a Commissioner for Parliamentary Investigation<sup>11</sup> to undertake investigations where he has reason to believe that a member may have failed to comply with the registration of interests required by the code of conduct relating to financial interests<sup>12</sup>.

1 See HC Standing Orders (Public Business) (2009) no 150(1).

2 As to the House of Commons Commission see PARA 946.

3 As to the Committee on Standards and Privileges see PARA 988.

4 HC Standing Orders (Public Business) (2009) no 150(11). Any such report must include a statement of the Committee's reasons for its conclusion: no 150(11).

5 As to the register of members' financial interests see PARA 1069.

6 As to the Code of Conduct for the House of Commons see PARA 1071.

7 HC Standing Orders (Public Business) (2009) no 150(2)(a)-(d).

8 HC Standing Orders (Public Business) (2009) no 150(2)(e). No such report is made by the commissioner: (1) in any case where the member concerned has agreed that he has failed to register or declare an interest, if it is the commissioner's opinion that the interest involved is minor, or the failure was inadvertent, and the member concerned has taken such action by way of rectification as the commissioner may have required; and (2) in any case involving parliamentary allowances, or the use of facilities or services, if the commissioner has with the agreement of the member concerned referred the matter to the relevant officer of the House for the purpose of securing appropriate financial reimbursement: HC Standing Orders (Public Business) (2009) no 150(3). See *R v Parliamentary Comr for Standards, ex p Al Fayed* [1998] 1 All ER 93, [1998] 1 WLR 669, CA (the supervisory powers of the court cannot be used to control the Parliamentary Commissioner for Standards' investigation of a complaint).

9 HC Standing Orders (Public Business) (2009) no 150(4). As to the constitution and procedures of the investigatory panel and the procedures to be followed see no 150(5)-(9).

10 HC Standing Orders (Public Business) (2009) no 150(10).

11 See PARA 925.

12 See the Parliamentary Standards Act 2009 s 9(6), (7); and PARA 925. As to the code see PARA 1072. The Parliamentary Standards Act 2009 is silent on the impact of its provisions on the continuing functions of the non-statutory Parliamentary Commissioner for Standards.

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#### **1074. Lobbying for reward or consideration.**

The House of Commons has by resolution declared it inconsistent with the dignity of the House and a member's duty to his constituents, and with the maintenance of the privilege of freedom of speech, for him to enter into contractual agreements with an outside body controlling or limiting his freedom of action in Parliament or stipulating that he act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament<sup>1</sup>. In particular no member may advocate or initiate<sup>2</sup> any cause or matter on behalf of any outside body or individual, or urge any member of either House (including ministers) to do so, in consideration of any remuneration, fee, payment, reward, or benefit in kind, direct or indirect, which the member or any of his family is receiving or expects to receive<sup>3</sup>.

This resolution prohibits paid advocacy, but does not prevent a member from holding a remunerated outside interest as a director, consultant, adviser or in any other capacity, whether or not such an interest is related to membership of the House<sup>4</sup>.

Members who have a paid interest must not initiate or participate in (which includes attendance) delegations where the matter at issue affects only the body making the payment to the member<sup>5</sup>.

A full copy of any such agreement, including details of the benefits to be conferred on the member by reference to a number of bands of income, must be deposited with the Parliamentary Commissioner for Standards and is open to inspection by the public<sup>6</sup>.

1 See the Resolution of the House of 6 November 1995 (265 HC Official Report (6th Series) col 681), amended on 14 May 2002 (385 HC Official Report (6th Series) col 731); and the *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) para 89. The Resolution of the House of 6 November 1995 extended and reinforced a Resolution of the House of 15 July 1947. See generally 202 Commons Journals 310; 251 Commons Journals 469-470, 551-555; and R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 2-048.

2 By means of any speech, question, motion, introduction of a Bill or amendment to a motion or a Bill or any approach either orally or in writing, to ministers or servants of the Crown: see note 1.

- 3 See note 1.
- 4 See the *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 90-91.
- 5 See note 1.
- 6 See note 1. As to the Parliamentary Commissioner for Standards see PARA 1073.

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### **1075. Participation in proceedings.**

Subject to the rule against lobbying for reward or consideration<sup>1</sup>, a member may initiate or participate in parliamentary proceedings<sup>2</sup> even if it concerns the affairs of a body from whom he draws a benefit, provided that the benefit is properly registered and declared<sup>3</sup>. However, a member may neither initiate nor take part in proceedings in the House or in committee which seek to confer benefits on a particular individual or body from which they receive payment<sup>4</sup>. A vote is disqualified only by direct pecuniary interest<sup>5</sup>.

In select committees, members are bound by the resolution of the House of Commons of 1992, which approved certain paragraphs of a report of the Select Committee on Members' Interests concerning the circumstances and timing of declaration of interests in such committees<sup>6</sup>.

The House resolved in 1995 that a relevant interest should be indicated on the order paper or the notice paper by the inclusion of the symbol 'R' against the appropriate notice of question, motion or amendment<sup>7</sup>.

1 See PARA 1071.

2 'Initiating parliamentary proceedings' includes presenting a bill; presenting a petition; tabling and asking a parliamentary question; asking a supplementary question to one's own question; initiating, or seeking to initiate, an adjournment (or other) debate; tabling or moving any motion; tabling or moving any amendment to a bill; proposing a draft report, or moving an amendment to a draft report in a select committee; giving any written notice or adding a name to such notice or making an application for and introducing a daily adjournment debate or an emergency debate: *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) para 98.

3 See *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) paras 95-97; and see *Sixth Report of the Committee on Standards in Public Life* (Cm 4557-I) (2000).

4 *Guide to the Rules relating to the conduct of Members* (HC Paper 735 (2008-09)) para 95.

5 On 17 July 1811 Speaker Abbot ruled that, 'No member who has a direct pecuniary interest in a question shall be allowed to vote upon it'. However he said the scope of the rule was limited to interests which were 'separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects or on a matter of state policy'. In practice this means that members may vote on all business before the House except private legislation where they have a direct pecuniary interest: see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 491; and R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 2-064.

6 249 Commons Journals 155; *First Report of the Select Committee on Members' Interests* (HC Paper 108 (1990-91)). The Select Committee on Members' Interests is now superseded by the Select Committee on Standards and Privileges: see PARAS 988, 1069.

7 251 Commons Journals 469; and see HC Paper 688 (1995-96) paras 43-45.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/9. Privileges of Parliament/(1) Origin and Scope of Privileges/1076. Claim to rights and privileges.

## **9. PRIVILEGES OF PARLIAMENT**

### **(1) ORIGIN AND SCOPE OF PRIVILEGES**

#### **1076. Claim to rights and privileges.**

The House of Lords and the House of Commons claim for their members, both individually and collectively, certain rights and privileges which are necessary to each House, without which they could not discharge their functions, and which exceed those possessed by other bodies and individuals<sup>1</sup>. In 1705 the House of Lords resolved that neither House had power to create any new privilege and when this was communicated to the Commons, that House agreed<sup>2</sup>. Each House is the guardian of its own privileges and claims to be the sole judge of any matter that may arise which in any way impinges upon them<sup>3</sup>, and, if it deems it advisable, to punish<sup>4</sup> any person whom it considers to be guilty of a breach of privilege or a contempt of the House<sup>5</sup>.

<sup>1</sup> See Erskine May's Parliamentary Practice (23rd Edn, 2004) Ch 5. As to the privilege of peerage as distinct from the privileges of the House of Lords see **PEERAGES AND DIGNITIES** vol 79 (2008) PARAS 823-828. As to privileges of dependent legislatures see **COMMONWEALTH** vol 13 (2009) PARA 825.

<sup>2</sup> 17 Lords Journals 677; 14 Commons Journals 555, 560.

<sup>3</sup> As to the jurisdiction asserted by the courts of law on matters of privilege see PARA 1078.

<sup>4</sup> As to the penal jurisdiction of both Houses see PARA 1096 et seq.

<sup>5</sup> As to breaches of privilege and contempt see PARAS 1083 et seq, 1097 et seq.

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#### **1077. Origin.**

The privileges of Parliament are based upon the law and custom of Parliament, that is, practice and precedents, to be found in the Rolls of Parliament and the journals of the two Houses, and to a lesser extent upon certain statutes which have been passed from time to time for the purpose of making clear particular matters in which the privileges claimed by either House of Parliament have come into conflict with the prerogatives of the Crown, with the courts or with the rights of individuals<sup>1</sup>.

<sup>1</sup> It is customary for the Speaker at the beginning of every Parliament to claim on behalf of the House of Commons the confirmation by the Crown of certain of its privileges which the monarch, through the commissioners appointed under the Great Seal, formally confirms: see PARA 1007. For the origin of this practice see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 78-79; and see generally 1 Hatsell's Precedents of Proceedings in the House of Commons (1818 Edn). The House of Lords enjoyed its privileges from early times and the House does not demand the confirmation of its privileges by the Crown at the beginning of each Parliament. As to the absence of power to create new privileges by declaration of one House only see PARA 1079. As to the origin of the power to commit for contempt see PARA 1097. As to the effect upon privilege of the commission of an act of bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 15.

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### 1078. The position of the courts of law.

Each House of Parliament has traditionally claimed to be the sole and exclusive judge of its own privilege and of the extent of that privilege<sup>1</sup>. The courts of law accept the existence of privileges essential to the discharge of the functions of the two Houses. In 1839, all the privileges required for the energetic discharge of the Commons' trust were conceded by the court without a murmur or doubt<sup>2</sup>; and over 150 years later, the Privy Council confirmed that the courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges<sup>3</sup>. On the other hand, the courts take the view that it is for them to determine whether a parliamentary claim to privilege in a particular case falls within that area where what is claimed is necessary to the discharge of parliamentary functions or internal to one or other of the Houses, in which case parliamentary jurisdiction is exclusive, or whether it falls outside that area, especially if the rights of third parties are involved, where the courts would expect to form their own judgments<sup>4</sup>.

1 See *Parliament Case* (1609) 13 Co Rep 63.

2 *Stockdale v Hansard* (1839) 3 State Tr NS 849 at 853 per Denman CJ; but see *R v Paty* (1705) 2 Ld Raym 1105 at 1110 per Powell J; *Brass Crosby's Case* (1771) 19 State Tr 1137 at 1149 per Grey CJ.

3 *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 at 332, [1994] 3 All ER 407 at 413, PC. See also *R v HM Treasury, ex p Smedley* [1985] QB 657 at 666, [1985] 1 All ER 589 at 593, CA, per Donaldson MR ('It . . . behoves the courts to be ever sensitive to the paramount need to refrain from trespassing on the province of Parliament, or, so far as this can be avoided, even appearing to do so . . . I would hope and expect that Parliament would be similarly sensitive to the need to refrain from trespassing upon the province of the courts'). Cf also, however, *Rost v Edwards* [1990] 2 QB 460 at 478, [1990] 2 All ER 641 at 653 (the decision in which was questioned in *Prebble v Television New Zealand Ltd* at 337 and 418).

4 As to the Bill of Rights (1688 or 1689) s 1 art IX see PARA 1082; and as to the history and citation of the Bill of Rights see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 35. As to the waiver of parliamentary privilege in certain circumstances in defamation proceedings see the Defamation Act 1996 s 13(1), (3); PARA 1008; and **LIBEL AND SLANDER** vol 28 (Reissue) PARA 104.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/9. Privileges of Parliament/(1) Origin and Scope of Privileges/1079. Limits of agreement regarding jurisdiction.

### 1079. Limits of agreement regarding jurisdiction.

In spite of the dualism of jurisdiction between the Houses of Parliament and the courts of law<sup>1</sup>, the current measure of agreement on the respective spheres of the two Houses and the courts has, since the mid-nineteenth century, prevented the direct conflicts of earlier years<sup>2</sup>.

Although the Houses have never directly admitted<sup>3</sup> the claim of the courts of law to adjudicate on matters of privilege, they appear to recognise that neither House is by itself entitled to claim the supremacy which was enjoyed by the undivided High Court of Parliament<sup>4</sup>.

For their part the courts of law acknowledge that the control of each House over its own proceedings is absolute and not subject to judicial jurisdiction; and the courts will not interfere

with the interpretation of a statute by either House so far as the proceedings of the House are concerned<sup>5</sup>. Neither will the courts inquire into the reasons for which a person has been adjudged guilty of contempt and committed by either House, when the order or warrant upon which he has been arrested does not state the causes of his arrest; for in such cases it is presumed that the order or warrant has been duly issued unless the contrary appears upon the face of it<sup>6</sup>.

1 For a statement of the position see Erskine May's *Parliamentary Practice* (23rd Edn, 2004) Ch 11; and (16th Edn) pp 168, 172. The statement in the sixteenth edition was adopted by the Judicial Committee of the Privy Council: *Re Parliamentary Privilege Act 1770* [1958] AC 331 at 353, [1958] 2 All ER 329 at 335, PC.

2 See *Bradlaugh v Gossett* (1884) 12 QBD 271 at 275 per Coleridge CJ.

3 A certain element of tacit acceptance by the House of Commons is, however, indicated by the fact that leave has been given to officers of the House to plead in cases involving their actions in carrying out the orders of the House. See eg *Bradlaugh v Gossett* (1884) 12 QBD 271 at 281; and 138 Commons Journals 364, 370.

4 See Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 176.

5 *Bradlaugh v Gossett* (1884) 12 QBD 271 at 281; *R v Graham-Campbell, ex p Herbert* [1935] 1 KB 594, DC; *British Railways Board v Pickin* [1974] AC 765, [1974] 1 All ER 609, HL.

6 *Burdett v Abbot* (1811) 14 East 1 at 150; *Ex p Van Sandau* (1846) 1 Ph 605. The Speaker's warrant is to be construed as if it were a writ from a superior court: *Gosset v Howard* (1847) 10 QB 411, Ex Ch.

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### **1080. Reviews of parliamentary privilege.**

In 1967 a report was made by a select committee appointed by the House of Commons to review the law of parliamentary privilege so far as it affected that House and the procedures by which cases of privilege were raised<sup>1</sup>. In 1971 the House took action on some of the select committee's recommendations<sup>2</sup>. In the session 1976-77 the outstanding recommendations were considered anew by the Committee of Privileges, which reaffirmed several of them<sup>3</sup>. In 1997 both Houses established a Joint Committee on Parliamentary Privilege to examine the state of parliamentary privilege which presented its report in 1999, recommending the enactment of a Parliamentary Privileges Act<sup>4</sup>.

1 *Report from the Select Committee on Parliamentary Privilege* (HC Paper 34 (1967-68)).

2 Reference is made to these decisions in PARA 1016.

3 *Recommendations of the Select Committee on Parliamentary Privilege* (HC Paper 417 (1976-77)). The further action taken by the House is described in PARA 1016. For the agreement of the House to the committee's recommendations see 234 Commons Journals 170.

4 581 HL Official Report (5th series), 17 July 1997, cols 1086-1090; *Report of the Joint Committee on Parliamentary Privilege* (HL Paper 43, HC Paper 214 (1998-99)). See further R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 3-027 et seq.

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## (2) PRIVILEGES ETC CLAIMED

### (i) Privileges etc Claimed by Both Houses

#### 1081. Exclusive cognisance of proceedings.

Both Houses of Parliament have long claimed the exclusive cognisance of their proceedings<sup>1</sup>. This claim involves the exclusion of review by any court or other external body of the application of the procedure and practice of either House to the business before it. The most far-reaching judicial admission of this privilege was made in 1884, when it was held that even if the House of Commons forbade a member to do what statute required him to do, and in order to enforce the prohibition excluded him from the House, the court had no power to interfere<sup>2</sup>. It is for Parliament to lay down the procedures by which bills and subordinate legislation and other business are dealt with, and to decide on any occasion whether to follow or depart from these norms. The courts themselves have conceded that it would be impracticable and undesirable for the High Court of Justice to embark on an inquiry concerning the effect or effectiveness of procedures in the High Court of Parliament, or an inquiry whether in any particular case those procedures were effectively followed<sup>3</sup>.

It is in the context of this privilege that without the leave of the House no member of either House may be compelled to give evidence in court regarding proceedings in the House<sup>4</sup>. No clerk, officer or shorthand writer of the Commons may give evidence in respect of proceedings without similar leave<sup>5</sup>. Parties to a suit in the courts who desire to produce evidence given to the House of Commons or any of its committees, or who wish to refer to any other document in the custody of the officers of the House must petition the Commons praying that the appropriate officer may attend and produce it<sup>6</sup>. A resolution of the Commons of 1980 partially relaxed the claim to exclusive cognisance by giving leave for reference to be made in court proceedings to the Official Report<sup>7</sup>, and to the published reports and public evidence taken by committees, without the necessity of a petition for leave<sup>8</sup>. The statutory protection afforded to both Houses by the Bill of Rights<sup>9</sup> was not affected by the resolution<sup>10</sup>.

1 For recent judicial comment on this privilege see *Pepper v Hart* [1993] AC 593 at 645-646, [1993] 1 All ER 42 at 73-74, HL, per Lord Browne-Wilkinson.

2 'The House of Commons is not subject to the control of . . . [the] courts in its administration of that part of the statute law which has relation to its own internal proceedings . . . Even if that interpretation should be erroneous [the] court has no power to interfere with it directly or indirectly': *Bradlaugh v Gossett* (1884) 12 QBD 271 at 278 and 280-281 per Stephen J. See also *R v Parliamentary Commr for Standards, ex p Al Fayed* [1998] 1 All ER 93, [1998] 1 WLR 669, CA (the supervisory powers of the court cannot be used to control the Parliamentary Commissioner for Standards' investigation of a complaint).

3 *British Railways Board v Pickin* [1974] AC 765 at 790, [1974] 1 All ER 609 at 620, HL, per Lord Morris of Borth-y-Gest. It is not only formal acts of the House which are covered by the claim to exclusive cognisance; see *R v Graham-Campbell, ex p Herbert* [1935] 1 KB 594, effectively repudiating dicta in *Williamson v Norris* [1899] 1 QB 7 at 12-13, 15, DC. In *Fairfold Properties Ltd v Exmouth Docks Co* (1990) Times, 15 October, it was held that an order from a court causing the promoters of a private bill in Parliament to write to the authorities of the Commons seeking to withdraw their bill was not an interference with the proceedings of Parliament.

4 See further PARA 1088.

5 See generally Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 104. The Lords have never taken this position.

6 See 73 Commons Journals (1818) 389. Cf however the Defamation Act 1996 s 13; and PARA 1082. This has never been applied in the Lords.

7 In the House of Lords, it has never been the practice to require an order of the House for leave to refer to the Official Report.

8 See 236 Commons Journals 823.

9 See PARA 1082.

10 236 Commons Journals 823; HC Paper 102 (1978-79) para 2, Appendix. See also comments made in the course of *Pepper v Hart* [1993] AC 593 at 645, [1993] 1 All ER 42 at 73-74, HL, on the privilege of exclusive cognisance. Copies of the journals of either House as printed by the authorised printers must be admitted by the courts without proof being given that the copies were so printed: see **CIVIL PROCEDURE** vol 11 (2009) PARA 890.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/9. PRIVILEGES OF PARLIAMENT/(2) PRIVILEGES ETC CLAIMED/(i) Privileges etc Claimed by Both Houses/1082. Freedom of speech and proceedings in Parliament.

### **1082. Freedom of speech and proceedings in Parliament.**

It is laid down in the Bill of Rights<sup>1</sup> that freedom of speech and debates or proceedings in Parliament are not to be impeached or questioned in any court or place out of Parliament. This was far from a new departure: the House of Commons had long laid claim to freedom from direct political interference by the Crown and from answerability at law in the courts for what was said in the House. The freedom of debates in the Lords from external interference or control had never been questioned<sup>2</sup>. It remains possible nevertheless for both Houses to restrain members who in their exercise of the privilege of free speech offend the House. The courts however have declined jurisdiction when the cause of an action before them was what had been spoken in Parliament<sup>3</sup>. Such protection may be extended to persons who are not members of either House but, as officers, petitioners, counsel or others, participate in their proceedings.

Notwithstanding the declaration of principle in the Bill of Rights problems of definition remain, especially in connection with the phrase 'proceedings in Parliament'. On the parliamentary side, an attempt was made at a limited definition in a select committee report of 1938-39<sup>4</sup>. The committee was of the opinion that the term 'proceedings' covered both the asking of a question and giving written notice of it. It included everything said or done by a member in the exercise of his functions as a member in either House or in a committee, as well as everything said or done there in the transaction of parliamentary business. It would be unreasonable to conclude, in the view of the committee, that the only acts within the scope of a member's duties in the course of parliamentary business are those done in the House or in a committee while it is sitting<sup>5</sup>. However when a member was in fact threatened with a libel action in respect of a letter he had written to a minister in connection with a matter of public policy, the House of Commons, rejecting the advice of its Committee of Privileges, decided that the letter was not a proceeding in Parliament<sup>6</sup>.

Thereafter, though a number of parliamentary and other reviews of the subject tended to the conclusion that a closer statutory definition of 'proceedings in Parliament' was desirable, comprehensive definition was not attempted. However, the Defamation Act 1996 now provides that in the limited sphere of actions for defamation and where the conduct of a person in or in relation to proceedings in Parliament is in issue, a member of either House may waive, so far as concerns him, the protection of any rule of law or enactment preventing proceedings in Parliament from being impeached or questioned in any court or place out of Parliament<sup>7</sup>. In that eventuality, the waiver was not to remove the protection afforded to any person by such rule of law or enactment in respect of words spoken or things done in the course of, or for the purposes of or incidental to 'proceedings in Parliament'. The circumstances in which this protective stipulation is to apply are based on the terms of the Parliamentary Privileges Act 1987, passed in Australia, where freedom of speech and debates or proceedings in Parliament

forms part of the privileges of the Commonwealth Parliament under the Australian constitution. They include the giving of evidence before either House or a committee<sup>8</sup>; the presentation or submission of a document to either House or a committee; the preparation of a document for the purposes of or incidental to the transacting of any such business; the formulation, making or publication of a document, including a report, by or pursuant to an order of either House or a committee; and any communication with the Parliamentary Commissioner for Standards or any person having functions in connection with the registration of members' interests<sup>9</sup>.

Judicial attention has also been paid to the phrase 'impeached or questioned' as it is found in the Bill of Rights. In making its decision in 1993 to set aside the rule which the courts had imposed on themselves excluding them from access to the legislative history of a statute when construing its provisions, the House of Lords in its judicial capacity held that such a practice would not amount to 'impeaching or questioning'<sup>10</sup>.

Freedom of speech and debates or proceedings in Parliament is of the highest constitutional importance and should not be narrowly construed. Where there is a conflict between the need to ensure that the legislature can exercise its powers freely on behalf of the electors, the need to protect freedom of speech generally and the interests of justice in ensuring that all relevant evidence is available to the courts, of these three important public interests, the law has long been settled that the first should prevail<sup>11</sup>.

1 See the Bill of Rights s 1 art IX. The history of the Commons struggle to obtain freedom of speech is summarised in Erskine May's *Parliamentary Practice* (23rd Edn, 2004) pp 79-82. As to the privilege of speeches in Parliament generally see **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 102-105; and as to the history and citation of the Bill of Rights see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 35. See also **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARAS 555, 596.

2 *Dillon v Balfour* (1887) 20 LR Ir 600.

3 *Report of the Select Committee on the Official Secrets Act* (HC Paper 101 (1938-39)). The report was agreed to by the House: see 194 Commons Journals 480.

4 In *A-G of Ceylon v De Livera* [1963] AC 103 at 121, [1962] 3 All ER 1066 at 1070, PC, the judicial committee, reviewing the scope of parliamentary privilege in the United Kingdom, observed: 'it is impossible to regard [a member's] only proper functions as a member as being confined to what he does on the floor of the House itself. In particular, in connection with his approaches to or relations with ministers, whether or not on behalf of one of his own constituents, it is recognised that his functions can include actions other than the mere putting down and asking of a parliamentary question'.

5 See HC Paper 305 (1956-57); HC Paper 227 (1957-58); 213 Commons Journal 260; 591 HC Official Report (5th series) 8 July 1958, cols 208-346.

6 *Report from the Select Committee on Parliamentary Privilege* (HC Paper 34 (1967-68)) paras 84-95; *Report of the Joint Committee on the Publication of Proceedings in Parliament* (HL 26, HC Paper 48 (1969-70)) paras 25-28; *Report of the [Official] Committee on Defamation* (1974-75) (Cmnd 5909) paras 203-210; and *Report from the Committee of Privileges* (HC Paper 417 (1976-77)) paras 7-8.

7 See the Defamation Act 1996 s 13(1); and **LIBEL AND SLANDER** vol 28 (Reissue) PARA 104.

8 'Committee' includes a joint committee: Defamation Act 1996 s 13(5).

9 See the Defamation Act 1996 s 13(5); and **LIBEL AND SLANDER** vol 28 (Reissue) PARA 104. The Australian Parliamentary Privileges Act 1987 elaborated on the relationship between the legislature and the courts and in 1994, the judicial committee of the Privy Council held that the Australian Act 'declare[d] what had been previously regarded as the effect of Article IX [of the Bill of Rights]' and the relevant subsection of that Act was 'the true principle to be applied': see *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 at 333, [1994] 3 All ER 407 at 414, PC. The Australian Parliamentary Privileges Act 1987 s 16(3) provides that in proceedings in any court or tribunal, it is not lawful for any evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament by way of or for the purpose of (1) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament; (2) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or (3) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from

anything forming part of those proceedings in Parliament. Cf *Rost v Edwards* [1990] 2 QB 460 at 477, [1990] 2 All ER 641 at 652-653.

10 *Pepper v Hart* [1993] AC 593 at 638-639 and 644-646, [1993] 1 All ER 42 at 67-69 and 73-74, HL, per Lord Browne-Wilkinson.

11 *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 at 336, [1994] 3 All ER 407 at 417, PC. See also, however, *Toussaint v A-G of St Vincent and the Grenadines* [2007] UKPC 48, [2008] 1 All ER 1, [2007] 1 WLR 2825.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/9. PRIVILEGES OF PARLIAMENT/(2) PRIVILEGES ETC CLAIMED/(i) Privileges etc Claimed by Both Houses/1083. Contempts.

### **1083. Contempts.**

The power of both Houses of Parliament to punish for contempt is a general power similar to that possessed by the superior courts of law<sup>1</sup> and is not restricted to the punishment of breaches of their acknowledged privileges<sup>2</sup>. Any act or omission which obstructs or impedes either House in the performance of its functions, or which obstructs or impedes any member or officer of the House in the discharge of his duty, or which has a tendency to produce such a result, may be treated as a contempt even if there is no precedent for the offence<sup>3</sup>. Acts deemed to obstruct either House may include those which tend to diminish the respect due to them and lower their authority<sup>4</sup>. In deciding whether or not to proceed against a person in regard to whom a charge of contempt has been made, the House of Commons has particular regard to its resolution of February 1978 that such action should be taken only when the House is satisfied that to do so is essential in the interests of reasonable protection against improper obstruction causing or likely to cause substantial interference with its functions<sup>5</sup>.

1 See **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 512 et seq.

2 See PARAS 1085-1095.

3 See the *Report of the Select Committee on the Official Secrets Acts* (HC Paper 101 (1938-39)) p xii.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) Ch 8; and cf **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 406.

5 234 Commons Journals 170.

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### **1084. Acts amounting to contempts.**

Among offences amounting to contempts are misconduct in the presence of the House or a committee of the House<sup>1</sup>; deliberately misleading the House in a personal statement<sup>2</sup>; refusing to answer questions as a witness before the House or a committee<sup>3</sup>; disobedience to rules or orders of the House or of a committee<sup>4</sup>; abusing the right to petition<sup>5</sup>; presenting forged documents to the House or conspiring to deceive the House<sup>6</sup>; misconduct in the exercise of duties as a member or officer of the House<sup>7</sup>; obstructing members<sup>8</sup> or officers or servants<sup>9</sup> of the House in the execution of their duty; speeches or writings reflecting on the House or on

individual members in their capacity as such<sup>10</sup>; and arresting, molesting or tampering with witnesses or instituting legal proceedings against them on account of their evidence<sup>11</sup>. Ministers who knowingly mislead Parliament are expected to offer their resignation to the Prime Minister<sup>12</sup> and such an offence might also be proceeded against as a contempt.

1 *Clifford's Case* (1830) 85 Commons Journals 461; *Carlisle's Case* (1920) 152 Lords Journals 405.

2 *Profumo's Case* (1963) 218 Commons Journals 246.

3 *Blunt's Case* (1720) 21 Lords Journals 418, 420; *Dobson's and Schofield's Case* (1946-47) 202 Commons Journals 377, 378; and see the Resolution of the Commons mentioned in 202 Commons Journals 378.

4 *Waller's Case* (1720) 21 Lords Journals 429; *Bradlaugh's Case* (1880) 135 Commons Journals 235.

5 *Phelan's Case* (1733) 24 Lords Journals 384; *Dunbar's Case* (1768-70) 32 Commons Journals 855.

6 *Mynde's Case* (1716) 20 Lords Journals 346, 349, 353, 356-357, 363; *Pilkington's Case* (1825) 80 Commons Journals 445.

7 *Trevor's Case* (1694) 11 Commons Journals 274; *Holinshed's Case* (1730) 23 Lords Journals 536. For cases where such an issue arose in modern times see eg *Allighan's Case* (1947-48) 203 Commons Journals 20; *Walkden's Case* (1947-48) 203 Commons Journals 20; and *Cordle's Case* (1976-77) 233 Commons Journals 448. For cases where no contempt was found but a committee considered, and the Commons agreed, that a member's conduct has fallen short of that standard which the House was entitled to expect, see *Maudling's and Roberts' Case* (1976-77) 233 Commons Journals 448; *Browne's Case* (1989-90) 246 Commons Journals 226; and *Riddick's and Tredinnick's Case* (1994-95) 251 Commons Journals 286.

8 See Resolutions of the Lords (31 Lords Journals 209); and of the Commons (22 Commons Journals 115; 37 Commons Journals 902).

9 Eg by commencing proceedings in a court of law against such persons for acting in obedience to an order of the House: *Bell's Case* (1827) 59 Lords Journals 199, 206; *Stockdale's Case* (1840) 95 Commons Journals 11, 71, 93, 174.

10 Reflections upon members not specifically named are treated as equivalent to reflections upon the House. The House of Commons has taken no penal action where it has considered the contempt to be insufficiently grave and a suitable apology has been offered; but a serious view is almost invariably taken of allegations of corruption, of partiality on the part of the chair or of influence of personal motives on members in the exercise of their duties. See *Daily Worker's Case* (1937-38) 193 Commons Journals 213 (defamation of Speaker); *Bittleston's Case* (1834) 66 Lords Journals 704, 737, 743 (defamation of Lord Chancellor); *Heighway's Case* (1947-48) 203 Commons Journals 20-22 (unfounded imputations against conduct of members); *Partridge's Case* (1724) 22 Lords Journals 367 (words reflecting on the honour and dignity of the House); *Warnock's Case* (1950-51) 206 Commons Journals 33 (reflections on the conduct of the House); *Barkley's Case* (1950-51) 206 Commons Journals 299 (libel on a chairman of a select committee); and *Junor's Case* (1956) 212 Commons Journals 50, 56, 64, 66 (allegations of personal advantages obtained by members). See also the Resolution of the House of Commons mentioned in 13 Commons Journals 767.

11 *Cambrian Railway Directors' Case* (1892) 147 Commons Journals 129, 157, 166; *Phillips' Case* (1845) 100 Commons Journals 672, 680, 696, 699; *Harbin and Harlow's Case* (1845) 77 Lords Journals 690, 712, 729. See also PARA 1088.

12 The Lords resolved to this effect on 20 March 1997, the Commons on 19 March 1997: see 579 HL Official Report (5th series) col 1057; 272 HC Official Report (6th series) col 1047.

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## 1085. Freedom from arrest.

The privilege of freedom from arrest is both of the greatest antiquity and claimed by resolutions of both Houses of Parliament<sup>1</sup>. No lord of Parliament<sup>2</sup> or member of the House of Commons may be imprisoned or restrained<sup>3</sup> without the order or sentence of the House of Lords or House of Commons except upon a criminal charge or for a criminal contempt of court<sup>4</sup> or, in the case of a member of the House of Lords, for refusing to give security for the peace<sup>5</sup>.

The basis of the claim is that it is an essential part of the constitution and working of Parliament, as of any other court, that the members who compose it should be able to attend to their duties without interruption or molestation<sup>6</sup>. However, since there are now very few arrestable civil offences, the privilege is of more practical value in its extension to exemption from summons as a witness<sup>7</sup>. The Joint Committee on Parliamentary Privilege has recommended that members' freedom from arrest in civil cases should be abolished<sup>8</sup>.

In order to claim privilege of Parliament a lord of Parliament must first take the oath<sup>9</sup>, but a person under arrest at the time he succeeds to a peerage may claim his discharge on the plea of privilege<sup>10</sup>. For members of the House of Commons, privilege of Parliament is not affected by the fact that a member has not yet taken the oath<sup>11</sup>, and a member who is in custody on civil process may be liberated upon his election in virtue of his privilege<sup>12</sup>.

There is no statutory definition of the period during which the privilege of Parliament extends. It has been held that a member of the House of Commons may not be arrested during a period extending from 40 days before to 40 days after a meeting of Parliament, the rule applying to a dissolution as well as to prorogation<sup>13</sup>. The House of Lords claims privilege for lords of Parliament when Parliament is sitting or during the usual times of privilege<sup>14</sup>.

In any case in which a member of either House has been arrested or sentenced to a period of imprisonment upon a criminal charge, the House of which he is a member should be informed appropriately<sup>15</sup>.

1 See eg 3 Lords Journals 562; 9 Commons Journals 342. For the earlier history of the privilege see *Cassidy v Stuart* (1841) 2 Man & G 437.

2 Parliamentary privilege of freedom from arrest applies only to lords of Parliament (see HL Standing Orders (Public Business) (2007) no 83); minor peers, noblewomen or widows of peers are excluded (no 84). Under the general privilege of peerage, a peer, whether or not he is a lord of Parliament, is at all times free from arrest in civil cases: see eg *Couche v Lord Arundel* (1802) 3 East 127; and **PEERAGES AND DIGNITIES** vol 79 (2008) PARA 828. The Joint Committee on Parliamentary Privilege has recommended that the privilege of peerage should be abolished: see the *Report of the Joint Committee on Parliamentary Privilege* (HL Paper 43, HC Paper 214 (1998-99)).

3 Statutory detention of members of the Commons under emergency regulations at several periods in the past has not been considered a breach of privilege but, by implication, akin to imprisonment on a criminal charge: see eg 601 Official Report (5th series) cols 223-227. For the protection afforded to officers of the Houses and witnesses attending either House or a committee see PARA 1088. As to detention under mental health legislation see, in relation to peers, the *Report of the Committee for Privileges on Parliamentary Privilege and the Mental Health Legislation* (HL 254 (1983-84)). The committee accepted the advice of Lord Diplock and other Law Lords that the provisions for the detention of mentally disordered persons in the Mental Health Act 1983 ss 2-6 override, in their application to peers, any privilege of Parliament or peerage. In the light of that advice, the committee recommended that when a suitable legislative opportunity arose the government should consider the inclusion of an express provision that peers are liable to be detained under the mental health legislation and that in such circumstances they are disqualified from sitting and voting in the Lords or from receiving a writ of summons. In the meantime, the committee recommended that there should be no change in what is now HL Standing Orders (Public Business) (2007) no 83. So far as members of the Commons are concerned, the express provision in the Mental Health Act 1983 for notifying the Speaker when a member is detained on grounds of mental illness and for vacating the seat of a member so detained for more than six months carries an implication that the Act overrides the privilege of freedom from arrest: see s 141; PARAS 935, 1094; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 445.

4 *Couche v Lord Arundel* (1802) 3 East 127; see also **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 40. A peer or member of the House of Commons may be committed for an offence under what is now the Insolvency Act 1986 s 426C, in spite of privileges of Parliament (*Re Armstrong, ex p Lindsay* [1892] 1 QB 327; see also PARAS 840, 903), and may also be committed for a criminal or quasi-criminal contempt of court (*Wellesley v Duke of Beaufort* (1831) 2 Russ & M 639 at 665; see also 86 (Pt I) Commons Journals 701; Erskine

May's Parliamentary Practice (23rd Edn, 2004) pp 123-124; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 505). As a consequence of the immunity of a member of Parliament it had been held that he could not be admitted as a surety to a recognisance (*Graham v Sturt* (1812) 4 Taunt 249; *Burton v Atherton* (1816) 2 Marsh 232; *Duncan v Hill* (1822) 1 Dow & Ry KB 126) but members of both Houses have been so admitted (eg at Bow Street magistrates' court on 14 August 1970 and at Minehead magistrates' court on 20 November 1978; and Erskine May's Parliamentary Practice (23rd Edn, 2004) p 124). As to the right to bring actions against members of Parliament see PARA 1088.

5 See HL Standing Orders (Public Business) (2007) no 83.

6 See 1 Hatsell's Precedents of Proceedings in the House of Commons (1818 Edn) 1-2.

7 See PARA 1087.

8 See the *Report of the Joint Committee on Parliamentary Privilege* (HL Paper 43, HC Paper 214 (1998-99)).

9 21 Lords Journals 327.

10 *McCabe v Lord Harley* (1849) 12 LTOS 313.

11 *European and American Finance Corp'n Ltd v MP* (1865) 13 LT 447.

12 *Phillips v Wellesley* (1830) 1 Dowl 9; 74 Commons Journals 44; 75 Commons Journals 230.

13 *Goudy v Duncombe* (1847) 1 Exch 430. A member is immune from arrest for 40 days after a dissolution even if he is not elected a member of the new Parliament: *Re Anglo-French Co-operative Society* (1880) 14 ChD 533.

14 See HL Standing Orders (Public Business) (2007) no 83. In effect, in modern times, the end of one parliamentary session is so close to the beginning of the next that the protection does not lapse as was the case in earlier days.

15 Notification of any restraint or imprisonment of a lord of Parliament is required to be given to the House of Lords by the court or authority ordering such restraint: see HL Standing Orders (Public Business) (2007) no 83. The arrest of a member of the House of Lords is notified to the House by means of a letter from the magistrate by whom the member has been remanded in custody or committed. In the event of the conviction of one of its members, the House is informed by the judge or magistrate concerned of the nature of the offence and the sentence imposed. The House of Commons is similarly informed of an arrest by means of a letter addressed to the Speaker, if a member is thereby prevented from attending the House. As to messages from the Crown regarding the arrest of a member of either House for trial by court-martial see PARA 812 note 3. When a lord or member is sentenced to a period of imprisonment but released following appeal, the need for such communication does not arise. There is no duty to inform the Speaker in the case of a person who, while in prison, is elected a member of the Commons.

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### **1086. Search of offices on the parliamentary estate.**

In 2008 the Speaker issued a Protocol on the execution of a search warrant in the precincts of the House of Commons, stipulating that in cases where the police wish to search within Parliament, a warrant must be obtained and any decision relating to the execution of that warrant must be referred to the Speaker, who must satisfy himself as to the formal validity of the warrant, the precision with which it specifies the material being sought, its relevance to the charge brought, and the possibility that the material might be found elsewhere<sup>1</sup>. Any search of a member's office or belongings should only proceed in the presence of the Sergeant at Arms, Speaker's Counsel or their deputies<sup>2</sup>. A similar Protocol was agreed by the House of Lords requiring, in case of an arrest, the notification and continued presence of Black Rod, and where the police seek access to effect a search a warrant, and the authority of the Lord Speaker<sup>3</sup>.

1 See *Mr Speaker's Protocol on the Execution of a Search Warrant in the Precincts of the House of Commons* (8 December 2008). See also the Speaker's statement on searches of the parliamentary communications service system: 485 HC Official Report (6th series), 9 December 2008, col 408. The protocol states that in cases where any officer or other member of the staff of the House is made aware that a warrant is to be sought the Clerk of the House, Speaker's Counsel, the Speaker's Secretary and the Sergeant at Arms must be informed; and no officer or other member of the staff of the House may undertake any duty of confidentiality which has the purpose or effect of preventing or impeding communication with these officers. At the date at which this volume states the law the matter was under review by the Committee on Issue of Privilege (Police Searches on Parliamentary Estate): see 496 HC Official Report (6th series), 13 July 2009, cols 126-127. As to the Speaker of the House of Commons see PARAS 931-936.

2 See *Mr Speaker's Protocol on the Execution of a Search Warrant in the Precincts of the House of Commons* (8 December 2008); and note 1.

3 See the *First Report of the House Committee: Police Access to the Precincts: Protocol* (HL Paper 74 (2008-09)); agreed in the House of Lords on 11 June 2009 (see 711 HL Official Reports (5th series) col 1745).

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### **1087. Summons of members and officers as witnesses in the courts.**

The service of a subpoena on members within the precincts of Parliament while the House is sitting is a contempt of Parliament<sup>1</sup>. In 1999 the Joint Committee on Parliamentary Privilege recommended that personal service of court documents on members within the precincts of Parliament should remain a contempt, but service by post should not be a contempt<sup>2</sup>.

The privilege of exemption of a member of the House of Commons from attendance as a witness has been asserted by that House on the ground of the paramount right of Parliament to the attendance and service of its members. The Speaker has communicated with the court, drawing attention to the privilege and asking that the member be excused<sup>3</sup>. A member may, however, choose to attend court as a witness without any formality, even on a day on which the House of Commons sits or is to sit<sup>4</sup>. The Joint Committee on Parliamentary Privilege has recommended that members should cease to be exempt from subpoenas to attend court as witnesses, but that a subpoena should not be issued against a member without the approval of a judge<sup>5</sup>.

Neither House will permit any of its members or officers to be served with a subpoena to give evidence with regard to any proceedings in Parliament, or to be compelled to produce documents which are in the custody of the House, until he has received its permission<sup>6</sup>. A resolution of the Commons in 1980 explicitly reserved the protection afforded by the Bill of Rights when reference is made in court to certain parliamentary documents<sup>7</sup>.

1 In the past the service of a subpoena on a member of either House of Parliament in any circumstance has been treated by the House concerned as a breach of privilege, but it is doubtful whether under present usage the actual service would be so treated unless effected personally within the precincts of the House while the House was sitting: see generally Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 125. When an officer of one House is required to attend to give evidence before the other House or a committee of the other House, a message is sent from one House to the other asking that leave be given for the attendance of the officer concerned. Standing orders provide that no lord is to go down to the House of Commons or send his answer in writing or appear by counsel to answer any accusation there (HL Standing Orders (Public Business) (2007) no 24); but the practice has been for the House of Lords to permit its members to attend before the Commons to defend themselves where no definite matter of accusation is pending (see eg *Viscount Melville's Case* (1805) 60 Commons Journals 265, 272).

2 See the *Report of the Joint Committee on Parliamentary Privilege* (HL Paper 43, HC Paper 214 (1998-99)).

3 See 206 Commons Journals 186; 209 Commons Journals 42; 521 HC Official Report (5th series), 1 December 1953, cols 957-959; and see also *Lewis v Mullaly* (1953) Times, 3 December; and **CIVIL PROCEDURE** vol 11 (2009) PARA 969.

4 In the past, the Commons has specifically granted leave to a member to attend court: see eg 68 Commons Journals 218, 243 et seq.

5 See the *Report of the Joint Committee on Parliamentary Privilege* (HL Paper 43, HC Paper 214 (1998-99)).

6 See Erskine May's *Parliamentary Practice* (23rd Edn, 2004) p 108 et seq. On the matter of jury service, formerly both Houses of Parliament claimed that their members were exempt from serving upon juries, and members (and officers of the two Houses) were, by statute (ie under the Juries Act 1974 s 9(1), Sch 1 Pt III (repealed)), made excusable as of right from jury service.

7 236 Commons Journals 823.

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### **1088. Protection of witnesses and others before Parliament.**

The same protection from arrest or molestation which enables members freely to attend their duties in Parliament<sup>1</sup> attaches to witnesses who appear to give evidence before either House of Parliament, or before any parliamentary committee<sup>2</sup>, and also to counsel, solicitors, agents and others who are engaged upon the business of Parliament. All these persons are protected, by the House upon whose business they are engaged, from arrest or from any other form of molestation<sup>3</sup>.

An officer of either House is protected from arrest when engaged upon the service of the House to which he belongs, and any interference with him when thus engaged may be punished as a contempt<sup>4</sup>.

Each House will also treat as contempts legal proceedings begun or other action taken against any person on account of anything which he may have said, or evidence which he may have given, in the course of any proceedings in the House itself or before one of its committees<sup>5</sup>.

1 See PARA 1085.

2 Both Houses have the power to compel, if necessary, the attendance of witnesses: *Howard v Gosset* (1845) 10 QB 359 at 395-396 per Williams J; on appeal *Gosset v Howard* (1847) 10 QB 411, Ex Ch. In the House of Lords a witness is summoned by means of an order signed by the Clerk of the Parliaments; in the House of Commons, by an order signed by the Clerk of the House. The privileges of declining to answer certain questions which are accorded to witnesses in a court of law (see **CIVIL PROCEDURE** vol 11 (2009) PARA 970 et seq) are not available to witnesses before either House or a committee of either House: see the resolution of the House of Commons mentioned in 202 Commons Journals 378.

3 There is a sessional order of the House of Commons declaring that it is a high crime and misdemeanour for any person to tamper with a witness in respect of his evidence to be given to the House or any committee of it, and stating that the House will proceed with the utmost severity against any such offender. A further sessional order states that any witness who has given false evidence in any case before the House or any committee of it will be punished with the utmost severity: see eg 231 Commons Journals 19. An action for slander will not lie against a person in respect of evidence given by him before either House of Parliament or before a committee of either House: *Goffin v Donnelly* (1881) 6 QBD 307, DC. As to interference with witnesses see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 728, 731. As to the protection of witnesses from civil proceedings for words spoken by them as such see **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 97-99.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 126-127, 152-154. The service of a writ upon an officer of the House within the precincts of the House has been treated by the House of Commons as a contempt: see *Verney's Case* (1945) 201 Commons Journals 198. See also the *Report from the Committee of Privileges* (HC Paper 144 (1972-73)) (complaint of service of a writ upon a member within the precincts of the House).

5 See 77 Lords Journals 690, 712, 729; 53 Commons Journals 389.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/9. PRIVILEGES OF PARLIAMENT/(2) PRIVILEGES ETC CLAIMED/(i) Privileges etc Claimed by Both Houses/1089. Privilege and those who communicate information to members.

### **1089. Privilege and those who communicate information to members.**

The Committee of Privileges of the House of Commons has advised that parliamentary privilege does not protect those who may volunteer information of public concern to members in their personal capacity. The question whether such information is subsequently used in the course of proceedings in Parliament is immaterial<sup>1</sup>. However, the position of a person providing information to a member in connection with the exercise of the latter's parliamentary duties has in some instances been regarded as enjoying qualified privilege at common law<sup>2</sup>.

1 HC Paper 112 (1954-55).

2 *R v Rule* [1937] 2 KB 375; *Beach v Freeson* [1972] 1 QB 14, [1971] 1 All ER 854. In *Rivlin v Bilainkin* [1953] 1 QB 485, [1953] 1 All ER 534, the court held that a communication of an allegedly defamatory nature repeated to a member of Parliament contrary to an injunction against repetition did not become part of proceedings in Parliament. It was not a defence that the publication took place within the precincts of Parliament.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/9. PRIVILEGES OF PARLIAMENT/(2) PRIVILEGES ETC CLAIMED/(i) Privileges etc Claimed by Both Houses/1090. Publication of proceedings.

### **1090. Publication of proceedings.**

Either House of Parliament, should it deem it expedient, may prohibit the publication of its proceedings. By standing orders the House of Lords declares that the printing or publishing of anything relating to the proceedings of the House is subject to the privileges of the House<sup>1</sup>. Upon many occasions in the past, the House of Commons declared the publication of its proceedings without the authority of the House to be a breach of privilege<sup>2</sup>. However, in 1971 it resolved that 'notwithstanding the resolution of the House of 3 March 1762 and other such resolutions, this House will not entertain any complaint of contempt of the House or breach of privilege in respect of the publication of the debates and proceedings of the House or of its committees except when any such debates or proceedings shall have been conducted with closed doors or in private, or when such publication shall have been expressly prohibited by the House'. The House also resolved that it would not entertain complaints either about the advance publication of a division list or notice paper showing how a member had voted or the contents of a notice of a parliamentary question or motion handed in, or about the publication of the expressed intention of a member to vote in a certain manner or to refrain from voting, or to hand in a notice of a question or motion<sup>3</sup>. These resolutions, which followed recommendations of the Select Committee on Parliamentary Privilege<sup>4</sup>, brought the rules of the House into conformity with long-standing practice<sup>5</sup>.

Although the privilege of freedom of speech protects what is said in debate in either House, it does not protect the publication of debates outside Parliament, even by a member of the House. Nor does an order of the House for their printing and publication confer parliamentary privilege on the publication by others of proceedings outside Parliament; but the publication of a fair and accurate account of debate in either House has been held by the courts to be protected by the same principle of common law that protects fair reports of proceedings in the courts, namely that the advantage to the community at large outweighs any disadvantage to individuals unless malice is proved. This is the distinction between the absolute privilege (in the parliamentary sense) of members speaking in either House and the qualified privilege (in the judicial sense) of a publisher reporting words spoken<sup>6</sup>.

Either House may consider a report of its proceedings in a newspaper or other publication to be a breach of its privileges if the report is manifestly inaccurate or untrue or if it discloses proceedings which have taken place after strangers have been ordered to withdraw<sup>7</sup>.

The privilege may also be invoked to prevent the publication of evidence taken by a select committee before it has been reported to the House, including the publication of draft reports, in cases where such publication has not been authorised by the select committee or, in the Commons, if the select committee is no longer in existence, authorised by the Speaker<sup>8</sup>.

Any civil or criminal proceedings which have been commenced against any person for publishing any reports, papers, votes or proceedings printed by order of either House of Parliament must be stayed upon the delivery of a certificate and affidavit to the effect that such publication was by order of either House of Parliament<sup>9</sup>.

1 HL Standing Orders (Public Business) (2007) no 16.

2 See 2 Commons Journals 209; 23 Commons Journals 148; 26 Commons Journals 754; 29 Commons Journals 206-207. The earliest resolution of the House of Commons was in 1641.

3 226 Commons Journals 548-549.

4 HC Paper 34 (1967-68) paras 116-117.

5 Eg since 1909 debates have been reported and issued by an official reporting staff under the authority of the Speaker, and since 1835 a gallery has been assigned to the press. Since 1978 facilities have been made available to the broadcasting authorities to publish both live and recorded versions of parliamentary debates: see 233 Commons Journals 452; and PARA 1064 et seq.

6 See *Wason v Walter* (1868) LR 4 QB 73; and **LIBEL AND SLANDER** vol 28 (Reissue) PARA 139.

7 See 197 Commons Journals 96, 129; 355 HC Official Report (5th series), 12 December 1939, col 1031.

8 Select committees are themselves empowered to publish evidence given to them, as is the Speaker if a select committee is no longer in existence: see HC Standing Orders (Public Business) (2009) no 135; and PARA 980. When evidence has been given before a select committee meeting in public, no complaint of privilege will be entertained on the ground that it has been published before having been reported to the House: HC Standing Orders (Public Business) (2009) no 136. See also *Dingle v Associated Newspapers Ltd* [1960] 2 QB 405, [1960] 1 All ER 294n; on appeal on another point [1961] 2 QB 162, [1961] 1 All ER 897, CA; affd sub nom *Associated Newspapers Ltd v Dingle* [1964] AC 371, [1962] 2 All ER 737, HL.

9 See the Parliamentary Papers Act 1840 s 1 (amended by the Statute Law Revision (No 2) Act 1890; and the Constitutional Reform Act 2005 s 18, Sch 6 para 2). Qualified privilege only (in the judicial not the parliamentary sense) is afforded to extracts from or abstracts of such proceedings etc: see the Parliamentary Papers Act 1840 s 3 (amended by the Statute Law Revision (No 2) Act 1888; by the Statute Law Revision Act 1958; and by virtue of the Broadcasting Act 1990 s 203(1), Sch 20 para 1). The Defamation Act 1952 s 9(1), which extends the privilege to include broadcasting by means of wireless telegraphy, has not been repealed but appears to have been superseded in practice by the Broadcasting Act 1990 s 203(1), Sch 20 para 1. See further **LIBEL AND SLANDER** vol 28 (Reissue) PARA 134. A person who without malice publishes an extract from a Command Paper (see PARA 809 note 2) presented to Parliament has been held to be protected by the Parliamentary Papers Act 1840 against any action for libel in respect of such extract: *Mangena v Wright* [1909] 2 KB 958. See also **LIBEL AND SLANDER** vol 28 (Reissue) PARA 105. It seems to have been assumed without argument in *Mangena v Wright* that the paper from which the extract was taken was a parliamentary paper for the purposes of the 1840 Act,

but it is not clear why, given that a paper presented to Parliament by Command of Her Majesty is not ordered to be printed by either House. Where the protection of the 1840 Act is sought, the House will normally make an order to print a paper presented to the House in response to an order for a return: see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 100, 263-264.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/9. PRIVILEGES OF PARLIAMENT/(2) PRIVILEGES ETC CLAIMED/(i) Privileges etc Claimed by Both Houses/1091. Power to exclude the public.

### **1091. Power to exclude the public.**

Members of the public, though formerly excluded from both Houses of Parliament by custom and the relevant standing orders, are now admitted to those parts of the respective chambers which are not appropriated for the use of members<sup>1</sup>. Each House nevertheless reserves the right to exclude the public and to debate behind closed doors.

When the House of Lords is sitting, no person is allowed on the floor of the House except lords of Parliament and such other persons as assist or attend the House<sup>2</sup>. The admission of members of the public to the chamber is subject to any orders which the House may make for that purpose<sup>3</sup>. Upon an order of the House for a secret sitting, persons in all or any of the galleries or in the spaces about the throne and below the bar are required to withdraw<sup>4</sup>.

In the House of Commons no person may be brought into any part of the House or gallery appropriated to members while the House or a committee of the whole House is sitting<sup>5</sup>, and the Serjeant at Arms is instructed to take into custody such persons, and also any member of the public misconducting himself in the public gallery<sup>6</sup>. During any sitting of the House a member may take notice that members of the public are present, whereupon the occupant of the chair under the standing order puts the question forthwith 'That the House sit in private' without permitting debate or amendment<sup>7</sup>. If he thinks fit, the Speaker or chairman may also order the withdrawal of the public from any part of the House without a prior order of the House<sup>8</sup>. Secret sessions in the Commons are preceded by an order of the House of this character<sup>9</sup>.

1 Galleries are provided in both Houses for the use of the public, the press and diplomatic representatives. In both Houses, committee proceedings may be held in public. The term 'strangers' was traditionally used in parliamentary language to refer to members of the public.

2 See HL Standing Orders (Public Business) (2007) no 12.

3 See HL Standing Orders (Public Business) (2007) no 13(1).

4 See HL Standing Orders (Public Business) (2007) no 12. Members of the Commons are not required to withdraw under this order.

5 See HC Standing Orders (Public Business) (2009) no 162.

6 See HC Standing Orders (Public Business) (2009) no 161(1). This power may also, if the chairman so directs, be exercised in respect of members of the public present at sittings of committees: no 161(2).

7 See HC Standing Orders (Public Business) (2009) no 163(1); and see eg 214 Commons Journals 32.

8 See HC Standing Orders (Public Business) (2009) no 163(1). An order that the public withdraw so the House can sit in private does not apply to members of the House of Lords: no 163(2). As to the Speaker of the House of Commons see PARAS 931-936.

9 See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 308-309. No secret sessions have been held in either House since 1945.

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## **(ii) Privileges Peculiar to the House of Lords**

### **1092. Privileges of the House of Lords.**

No oath may, by any bill or otherwise, be imposed upon any peer the refusal of which entails the loss of his place or vote in Parliament, or curtails the liberty of debate in the House of Lords<sup>1</sup>.

The House of Lords has jurisdiction over peerage claims, so that an hereditary peer (not previously in receipt of a writ of summons) seeking to have his name included in the Clerk of the Parliament's register of candidates for election as an excepted hereditary peer under the House of Lords Act 1999 must petition the House to prove his succession to the hereditary peerage<sup>2</sup>.

1 See HL Standing Orders (Public Business) (2007) no 86.

2 See the *Earl of Bristol's Case* (1626) 3 Lords Journals 537, 563. As to the right by which a peer receives a writ of summons to sit and vote in the House of Lords see **PEERAGES AND DIGNITIES** vol 79 (2008) PARA 822. As to the modern practice by which a peer proves his right to receive such a writ see PARA 836. See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) p 68.

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## **(iii) Privileges Peculiar to the House of Commons**

### **1093. Privilege of the House of Commons in relation to its constitution.**

In addition to possessing a complete control over the regulation of its own proceedings and the conduct of its members<sup>1</sup>, the House of Commons claims the exclusive right of providing, as it may deem fit, for its own proper constitution<sup>2</sup>.

1 See *Bradlaugh v Gossett* (1884) 12 QBD 271; *Burdett v Abbot* (1811) 14 East 1 at 148; *Bradlaugh v Erskine* (1883) 47 LT 618. As to the rules which regulate the procedure of debate and for the powers which the House confers upon the Speaker and the chairman, as the case may be, to maintain order in the House or in a committee of the whole House see PARAS 956-960. As to the privileges claimed by the House of Commons with regard to the control of taxation and public expenditure generally see PARAS 821-827.

2 The jurisdiction formerly exercised by the House in controverted elections has been transferred since 1868 to the courts of law. As to controverted elections and election petitions see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 759 et seq.

Halsbury's Laws of England/Parliament (Volume 78 (2010) 5th Edition)/9. Privileges of Parliament/(2) Privileges etc claimed/(iii) Privileges Peculiar to the House of Commons/1094. Power to fill vacant seat while the House of Commons is sitting.

### **1094. Power to fill vacant seat while the House of Commons is sitting.**

When the House of Commons is sitting and a seat becomes vacant by reason of the death of a member, or for any other cause<sup>1</sup>, the House, upon motion made<sup>2</sup>, orders the Speaker to issue his warrant empowering the Clerk of the Crown in Chancery or the Clerk of the Crown in Northern Ireland, as the case may be, to make out a new writ to fill the vacancy<sup>3</sup>. Where a vacancy occurs before or immediately after the first meeting of a new Parliament, the writ will not be issued until the time for presenting election petitions has expired<sup>4</sup>. If an election petition claiming the seat is pending, the writ will not be issued until after the petition has been tried or withdrawn<sup>5</sup>.

If a member is authorised to be detained on grounds of mental disorder, the Mental Health Act 1983 provides that the authority or person who authorised the detention, the medical practitioner who recommended it and the person in charge of the place where the member is detained must notify the Speaker of the fact<sup>6</sup>. The Speaker must cause that member to be visited and examined by two registered medical practitioners appointed by the President of the Royal College of Psychiatrists<sup>7</sup> who must report to the Speaker whether the member is suffering from mental disorder and is authorised to be detained under a relevant enactment<sup>8</sup>. If they report that that is the case, the Speaker must again cause the member to be visited and examined at the end of six months from the date of the report, if the House is then sitting, or as soon as may be after the House next sits<sup>9</sup>. If the second report is that the member is suffering from mental disorder and authorised to be detained, the Speaker must forthwith lay both reports before the House, and thereupon the seat of the member becomes vacant<sup>10</sup>.

<sup>1</sup> See PARA 894.

<sup>2</sup> A motion of this kind is usually made by one of the whips of the party to which the former member belonged. Motions are moved as a matter of privilege without notice, except where the seat of any member has been declared void on the grounds of bribery or treating: see 103 Commons Journals 423.

<sup>3</sup> For the notice required in such cases, and the action which has been taken by the Commons, see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 40-41.

<sup>4</sup> See eg 472 HC Official Report (5th series) cols 1721-1730. As to the time for presenting election petitions see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 783.

<sup>5</sup> Eg the Athlone election 1859; the Durham election (1852-1853); the Louth election 1866: see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 40-41. If the petition merely alleges a void election and does not claim the seat, a writ may be issued: see eg 154 Official Report (3rd series) cols 450, 454.

<sup>6</sup> See the Mental Health Act 1983 s 141(1); and PARA 900. An alternative procedure is for two members to certify to the Speaker that they are credibly informed of the detention: see the Mental Health Act 1983 s 141(2). As to the Speaker of the House of Commons see PARAS 931-936.

<sup>7</sup> The practitioners appointed must appear to the president to have special experience in the diagnosis or treatment of mental disorders: see the Mental Health Act 1983 s 141(3). As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

<sup>8</sup> See the Mental Health Act 1983 s 141(3), (4) (s 141(4) amended by the Mental Health Act 2007 s 1(4), Sch 1 paras 1, 16(1), (3)(a), (b)). References in the Mental Health Act 1983 s 141 to a member who is authorised to be detained do not include a member who is a community patient (whether or not he is recalled to hospital under s 17E: see **MENTAL HEALTH**: s 141(6C) (added by the Mental Health Act 2007 s 1(4), Sch 1 paras 1, 16(1), (5)). For these purposes a 'relevant enactment' means (1) the Mental Health Act 1983; (2) the Criminal Procedure (Scotland) Act 1995 and the Mental Health (Care and Treatment) Scotland Act 2003; and (3) the Mental Health (Northern Ireland) Order 1986: Mental Health Act 1983 s 141(6A) (added by the Mental Health Act 2007 s 1(4), Sch 1 paras 1, 16(1), (5)). Any sums required for the payment of fees and expenses to

registered medical practitioners acting in relation to a member of the House of Commons under these provisions must be defrayed out of moneys provided by Parliament: Mental Health Act 1983 s 141(7).

9 See the Mental Health Act 1983 s 141(5) (amended by the Mental Health Act 2007 s 1(4), Sch 1 paras 1, 16(1), (4)).

10 See the Mental Health Act 1983 s 141(6) (amended by the Mental Health Act 2007 s 1(4), Sch 1 paras 1, 16(1), (4)).

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### **1095. Power to fill vacant seat during prorogation or adjournment.**

During a prorogation of Parliament or adjournment of the House<sup>1</sup>, the Speaker<sup>2</sup> may issue his warrant empowering the Clerk of the Crown in Chancery, or the Clerk of the Crown in Northern Ireland, as the case may be, to make out a writ for the election of a new member if a vacancy is caused by (1) the death, or disqualification as a peer from membership of the House, of a member, during the recess or before it<sup>3</sup>; (2) a member's acceptance of a disqualifying office during the recess<sup>4</sup>; or (3) a member's bankruptcy<sup>5</sup>. The fact must be brought to the notice of the Speaker by means of a certificate of vacancy<sup>6</sup>, signed by two members of the House and sent to the Speaker, requesting him to issue his warrant authorising the making out of a writ for the election of a new member<sup>7</sup>. Where a disqualifying office is accepted the certificate must be accompanied by a copy of the London Gazette, Edinburgh Gazette or Belfast Gazette containing the member's appointment to the office<sup>8</sup>, and the member himself must give written notice to the Speaker of his acceptance, which he may do by signing the certificate of vacancy<sup>9</sup>.

Upon the receipt of a certificate of vacancy, the Speaker may issue the necessary warrant, subject to the following restrictions and conditions. He must cause the notice of receipt to be inserted in the London Gazette<sup>10</sup>, and the warrant may not be issued until six days after that insertion<sup>11</sup>. He must allow enough time for the issue of a writ for the by-election before the day appointed for the next meeting of the House for the dispatch of business<sup>12</sup>. Except where head (3) above applies, the return of the writ of the late member must have been brought into the office of the Crown in Chancery at least 15 days before the end of the last sitting of the House before the Speaker's receipt of the certificate<sup>13</sup>; and a petition must not be pending against the election of the late member at the time when Parliament was prorogued or the House adjourned<sup>14</sup>.

1 As to adjournment and prorogation see PARA 998 et seq.

2 At the beginning of every Parliament the Speaker must appoint, for the duration of the Parliament, certain members of the House to execute his duties with regard to the issue of writs in the event of his death, vacation of seat or absence from the country: see the Recess Elections Act 1975 s 4(1), (2). The members thus appointed must not exceed seven nor be fewer than three in number, and this appointment must be gazetted: see s 4(1), (3); and see eg the Speaker's notice of 5 July 2005, published in the London Gazette, 7 July 2005, p 1. The Speaker's powers may be exercised by any one of the members so appointed, but when notice of the issue of a warrant is brought to the publisher of the Gazette and is signed by a member so appointed, the publisher must give a receipt for it, specifying the day and hour when it was received, and if more than one notice is brought to him relevant to the same election, he must insert in the Gazette only the notice first received: see the Recess Elections Act 1975 s 4(4). As to the Speaker of the House of Commons see PARAS 931-936.

3 See the Recess Elections Act 1975 s 1(1)(a) (amended by the House of Lords Act 1999 s 4(1), Sch 1 para 2(e)).

4 See the Recess Elections Act 1975 s 1(1)(b). As disqualifying offices see PARA 905 et seq. If it appears to the Speaker that an opportunity should be given to the House to make an order directing that the

disqualification or alleged disqualification should be disregarded, he may defer the issue of the warrant pending the determination of the House: House of Commons Disqualification Act 1975 (Reprint No 15) s 6(4). The Speaker may not issue his warrant during a prorogation or an adjournment where the vacancy is caused by the acceptance of the office of steward or bailiff of the Chiltern Hundreds or Manor of Northstead: see s 1(2) (amended by the Statute Law (Repeals) Act 1993). See also PARA 895.

5 See the Recess Elections Act 1975 s 1(1)(c). A person in respect of whom a bankruptcy restrictions order or a debt relief restrictions order has effect is disqualified from membership of the House of Commons: see PARA 903.

6 'Certificate of vacancy' means (1) where head (1) or head (2) in the text applies, a certificate of two members of the House of Commons in the form set out in the Recess Elections Act 1975 Sch 1, or to the same effect (s 1(2)(a) (amended by the House of Lords Act 1999 s 4(1), Sch 1 para 2(b)); and (2) where head (3) in the text applies, a certificate under the Insolvency Act 1986 s 427(6)(a) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**): Recess Elections Act 1975 s 1(2)(b) (amended by the Insolvency Act 1986 s 439(2), Sch 14).

7 See the Recess Elections Act 1975 s 1(1), Sch 1 (Sch 1 amended by the House of Lords Act 1999 s 4(1), Sch 1 para 3).

8 See the Recess Elections Act 1975 s 3(2).

9 See the Recess Elections Act 1975 s 3(1).

10 Recess Elections Act 1975 s 2(1).

11 Recess Elections Act 1975 s 2(2).

12 See the Recess Elections Act 1975 s 2(3).

13 Recess Elections Act 1975 s 2(4)(a).

14 Recess Elections Act 1975 s 2(4)(b).

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### (3) JURISDICTION OF PARLIAMENT

#### 1096. Proceedings against offenders.

If a contempt is committed in the sight of either House of Parliament, the House may proceed to punish the offender at once, without hearing him, otherwise than by way of apology or to manifest his contrition<sup>1</sup>. Similarly, if a contempt committed outside the House is so flagrant and clear that no inquiry is called for, the House may deal with the matter at once<sup>2</sup>.

However, neither House usually deals with an alleged breach of its privileges or contempt without first hearing in his own defence the person implicated. In the House of Lords complaints of breach of privilege or contempt may be referred to the Committee for Privileges<sup>3</sup> for investigation and report. In the House of Commons a special procedure<sup>4</sup> for raising a matter of privilege has to be followed before an inquiry will be initiated. A member must give written notice of his complaint to the Speaker's office on a sitting day as soon as reasonably practicable after the matter has come to his attention. The Speaker then considers whether the matter merits precedence over other business<sup>5</sup>. If he decides against giving precedence, it is then not in order for the member to raise the matter in the House, although it would be open to him to give notice of a motion which would not be entitled to any special precedence. If the Speaker decides that the matter should be given precedence, he informs the member of the day on which he will announce his decision in the House. This announcement is the first intimation that the House receives of the complaint, and any motion relating to the complaint is thus usually considered on the following day. On the day of the announcement, the member

whose complaint it is tables his motion (normally to refer the matter of complaint to the Committee on Standards and Privileges) and on the next day the motion is given precedence over other motions and orders of the day<sup>6</sup>.

Following a report from its committee investigating a matter of privilege, it is for each House to decide whether to take action to enforce a due observance of its privileges and punish any breach of them.

1 As to such punishment see PARA 1097 et seq. See also Erskine May's Parliamentary Practice (23rd Edn, 2004) Ch 9. If a contempt involves criminal conduct, the Speaker may order an offender to be handed over to the police and inform the House accordingly: see 226 Commons Journals 68. In such cases the House might take no further action on its own behalf.

2 See eg *Warnock's Case* (1950-51) 206 Commons Journals 33.

3 As to the Committee for Privileges see PARA 886.

4 See the Resolution of the House of 6 February 1978, which approved the *Report of the Committee of Privileges* (HC Paper 417 (1976-77)), itself founded on the *Recommendations of the Select Committee on Parliamentary Privilege* (HC Paper 34 (1967-68)). The object of this resolution was to reduce the number of occasions on which matters of privilege are raised on the floor of the House: see R. Blackburn and A. Kennon, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd Edn, 2003) para 3-029.

5 In so doing the Speaker has regard to the House's expressed wish that privilege should be invoked as sparingly as possible and to the previous reports of the Committee of Privileges: see HC Paper 417 (1976-77) paras 4-5. For other criteria which the Speaker applies see paras 6, 16.

6 If a matter is urgent the Speaker could announce his decision on the day he receives the complaint, in which case he would call the member to move his motion without notice.

Halsbury's Laws of England/PARLIAMENT (VOLUME 78 (2010) 5TH EDITION)/9. PRIVILEGES OF PARLIAMENT/(3) JURISDICTION OF PARLIAMENT/1097. Power to commit.

### **1097. Power to commit.**

Each House of Parliament has power to commit to prison persons (including its own members) who offend against the privileges of the House concerned or who are considered to be in contempt<sup>1</sup>, although the last time such a power was exercised was in 1880, by the House of Commons. Offenders are detained either in prison, or in the custody of the Gentleman Usher of the Black Rod<sup>2</sup> or the Serjeant at Arms<sup>3</sup>, as the case may be. In the House of Lords persons are attached and committed by order, without any warrant; the order of the House is signed by the Clerk of the Parliaments<sup>4</sup> and serves as the authority under which Black Rod and keepers of prisons execute their duty. In the Commons, when an offender is committed either to the custody of the Serjeant or to a prison, the Speaker is directed by the House to issue his warrant accordingly<sup>5</sup>.

The Gentleman Usher of the Black Rod gives effect to the rules and orders of the Lords in relation to the admission of members of the public to the Chamber and the precincts of the House, and has been given by the House such powers, including the power to take into custody, as are necessary for that purpose<sup>6</sup>. In the Commons, persons who misbehave in the galleries of the House may be taken into the custody of the Serjeant at Arms, in the exercise of powers conferred on him by standing orders<sup>7</sup>. Offenders are normally discharged at the rising of the House on the day of their detention.

1 *R v Flower* (1799) 8 Term Rep 314; *Brass Crosby's Case* (1771) 3 Wils 188; *Earl of Shaftesbury's Case* (1677) 1 Mod Rep 144; *Murray's Case* (1751) 1 Wils 299; *Hobhouse's Case* (1820) 3 B & Ald 420; *Sheriff of Middlesex Case* (1840) 11 Ad & El 273. For the origin of this power cf *Kielley v Carson* (1842) 4 Moo PCC 63.

2 See PARA 857.

3 See PARA 944.

4 See PARA 855.

5 Fines have been imposed by both Houses upon offenders in addition to committing them to prison, though in the case of the Commons not without challenge: see *R v Pitt and Mead* (1762) 3 Burr 1335; and HL 66 (1955-56) p xiii. The last instance in which the Commons imposed a fine was in the case of Thomas White in 1666: see 8 Commons Journals 690. A recommendation that the House should be given a power to fine through new legislation was made by the Joint Committee on Parliamentary Privilege in 1999 (see HC Paper 214; HL Paper 43 (1998-99)) and by the House of Commons Committee of Privileges in 1976 (see HC Paper 417 (1977-78)) reaffirmed by the Committee of Privileges in 1977: see HC Paper 34 (1967-68) paras 195-197; and HC Paper 417 (1976-77) paras 13-15). At the date at which this volume states the law no action had been taken on this recommendation. As to the power of the Commons to expel members of the House see PARA 1026. The last instance in which the Lords imposed a fine was in the case of Alan Macleod in 1801: see 43 Lords Journals 104.

6 HL Standing Orders (Public Business) (2007) no 13; and PARA 1091.

7 See HC Standing Orders (Public Business) (2009) no 161; and PARA 1091.

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### 1098. Period of imprisonment.

The House of Lords has committed offenders against its privileges for a specified period even beyond the period of a session<sup>1</sup>. This course was also formerly pursued by the House of Commons but was later abandoned; and it would now seem that it no longer has power to keep offenders in prison beyond the period of a session<sup>2</sup>. Subsequently the Commons committed an offender until he had expressed contrition for his offences, or the House was satisfied, upon motion, that it was proper to release him<sup>3</sup>. A similar course was followed in the Lords<sup>4</sup>. An order may be made by either House for the payment of fees by an offender on his discharge.

1 See 32 Lords Journals 575; 82 Lords Journals 478.

2 *Stockdale v Hansard* (1839) 9 Ad & El 1 at 114 per Denman CJ; and see HC Paper 283 (1839) p 142.

3 See 134 Commons Journals 381, 385; 135 Commons Journals 241. Both the Joint Committee on Parliamentary Privilege in 1999 (see HC Paper 214; HL Paper 43 (1998-99)) and the House of Commons Committee of Privileges in 1976 (see HC Paper 417 (1977-78)) have recommended that while the power to detain persons who cause a disturbance in the galleries of the House or elsewhere in the precincts should be retained, the power to imprison, as a penalty for a contempt of the House, should be extinguished by legislation: see HC Paper 417 (1977-78) para 15. At the date at which the volume states the law, no action had been taken on these recommendations.

Persons found guilty of a breach of privilege in 1955 by the House of Representatives of the Australian Commonwealth, which has the same privileges as the House of Commons, were imprisoned for a specified period, the House directing that they be kept in custody until 10 September 1955, or until earlier prorogation or dissolution, unless the House should sooner order their discharge: see Votes and Proceedings of the House of Representatives (1954-55) 269-271. A writ of habeas corpus was subsequently refused by the Full Court of the High Court of Australia (*R v Richards, ex p Fitzpatrick and Browne* [1955] ALR 705); and leave to appeal was refused by the Judicial Committee of the Privy Council: see (1955) Times, 15 July. On 19 December 1978, Mrs Indira Gandhi was committed to gaol by the Indian Lower House, whose privileges are the same in this respect as the House of Commons: see Lok Sabha Bulletin no 197.

4 See 102 Lords Journals 77.

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### **1099. Reprimand and admonition.**

Where the gravity of the offence does not warrant imprisonment, offenders against Parliamentary privilege may be reprimanded or admonished<sup>1</sup>. In such cases offenders are brought to the bar of the House concerned and there reprimanded or admonished by the Lord Speaker or the Speaker<sup>2</sup> as the case may be. Where the offender is a member of the House of Commons, he customarily was reprimanded or admonished standing in his place; but more recently members have been reprimanded by virtue of a resolution agreed to by the House and no further formality has been used.

<sup>1</sup> See generally Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 162, 163. If the offence is slight, the House may decide to overlook it altogether.

<sup>2</sup> The words of the Lord Speaker in reprimanding or admonishing offenders are entered in the Journals. The words of the Speaker have been similarly noticed, although this is not the invariable practice. As to the Lord Speaker see PARA 850; and as to the Speaker of the House of Commons see PARAS 931-936.

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### **1100. The power of expulsion.**

Although the House of Commons has delegated its right to be the judge in controverted elections<sup>1</sup>, it retains its right to decide upon the qualifications of any of its members to sit and vote in Parliament<sup>2</sup>. If in the opinion of the House a member has conducted himself in a manner which renders him unfit to serve as a member of Parliament, he may be expelled<sup>3</sup>, but, unless the cause of his expulsion by the House constitutes in itself a disqualification to sit and vote in the House, he remains capable of re-election<sup>4</sup>.

Although the House of Lords currently has no power to expel its members, the government proposes to enact legislation allowing that House to make an expulsion resolution in relation to an excepted hereditary peer or a life peer<sup>5</sup>.

<sup>1</sup> See PARA 1093 note 2.

<sup>2</sup> See Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 164-165.

<sup>3</sup> Members have been expelled from the House of Commons upon various grounds, such as being rebels, or having been guilty of forgery, perjury, frauds and breaches of trusts, misappropriation of public money, corruption in the administration of justice or in public offices or in the execution of their duties as members of the House, or of contempts and other offences against the House itself: see Erskine May's Parliamentary Practice (23rd Edn, 2004) p 165.

<sup>4</sup> See the case of John Wilkes in 1769, 32 Commons Journals 228-229. Cf the case of Bradlaugh in 1882, when no question as to the validity of his election was raised upon his re-election to the House by the electors of Northampton after his expulsion from the House of Commons: see 137 Commons Journals 62.

<sup>5</sup> See the Constitutional Reform and Governance Bill (HC Paper (2008-09) no 142) cl 28.

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### **1101. Suspension.**

Members of the House of Commons may be suspended under a procedure about a century old which is laid down in standing orders, if they have disregarded the authority of the Speaker or other member in the chair, or abused the rules of the House<sup>1</sup>. Members may, however be punished by suspension under even older practice, not enshrined in standing orders, for other offences which the House judges worthy of such punishment. Suspension under the standing order does not involve temporary interruption of salary. Such a provision has, however, sometimes been made in the resolutions imposing suspension other than under standing orders<sup>2</sup>.

Until recently the House of Lords never sought to use the sanction of suspension<sup>3</sup>. However in 2009, following allegations made against four members of the House of Lords, the Committee for Privileges<sup>4</sup> reviewed the powers of the House in respect of its members and concluded that the House possesses, and has possessed since ancient times, an inherent power to discipline its members, that the means by which it chooses to exercise this power falls within the regulation by the House of its own procedures and that the House possesses the power to suspend its members for a defined period not longer than the remainder of the current Parliament<sup>5</sup>. The House has approved the report's conclusions<sup>6</sup>. Additionally, the government proposes to enact legislation which would allow the House to make provision under standing orders to pass a suspension resolution in relation to an excepted hereditary peer or a life peer<sup>7</sup>.

1 See HC Standing Orders (Public Business) (2009) nos 43-45A.

2 See eg 246 Commons Journal 226; 251 Commons Journal 286. See also Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 163-164. As to the power of the Commons to expel see PARA 1100.

3 For the conclusions of a 1956 select committee on the powers of the House of Lords in relation to the attendance of members see 188 Lords Journals 174-178 at 178.

4 As to the Committee for Privileges see PARA 886.

5 See the *First Report of the Committee for Privileges* (HL Paper 87 (2008-09)). The committee took evidence from the Attorney General who considered the House did not have a power to suspend a member; and from a former Lord Chancellor (Lord Mackay of Clashfern) who concluded the House of Lords, like the House of Commons, has always had an inherent power deriving from its status as a constituent part of the High Court of Parliament to discipline its members, and that the Crown's writ of summons was subject to implied conditions that members must conduct themselves in accordance with the rules of the House. The Committee unanimously agreed with the advice of Lord Mackay of Clashfern; and this was agreed by the House of Lords in its consideration of the committee's report.

6 See 710 HL Official Report (5th series), 20 May 2009, col 1394-1418. The house also approved the committee's recommendations that two of the members complained about should be suspended from the House until the end of the session: see the *Second Report of the Committee for Privileges* (HL Paper 88 (2008-09)); and 710 HL Official Report (5th series), 20 May 2009, col 1418).

7 See the Constitutional Reform and Governance Bill (HC Paper (2008-09) no 142) cl 28.